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THE UNIVERSITY OF ALBERTA

School Authorities' Perceptions of Student and Parent Rights

by

Noel P. Gour

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND

RESEARCH IN PARTIAL FULFILMENT OF THE REQUIREMENTS

FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF EDUCATIONAL ADMINISTRATION

EDMONTON, ALBERTA

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FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled

School Authorities' Perceptions of Student
and Parent Rights

submitted by Noel P. Gour
in partial fulfilment of the requirements for the
degree of Doctor of Philosophy
in Educational Administration

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ABSTRACT

The purpose of the study was to document the perceptions of Alberta school authorities concerning the rights and freedoms of pupils and parents implied in the principles enunciated in the Canadian Charter of Rights and Freedoms (Charter).

Teachers, principals, superintendents, Department of Education personnnel, and trustees interact with individual students and with groups or classes of students. As Canada embarks on a major shift of emphasis in the protection of individual and group rights, educator and trustee perceptions concerning their rights need to be ascertained.

The study was divided into two phases. In Phase One, a questionnaire was used to gather the data. The questionnaire asked the participant to respond to a set of belief statements that accompanied each defined situation. Each of the situations was linked to a specific section of the Charter. The second part of the questionnaire elicited the respondents' personal responses to an additional set of belief statements that were also linked to various sections of the Charter.

In Phase Two, the interview format was used to clarify some of the findings of the questionnaire. School authorities not surveyed by the questionnaire were selected for the structured interviews.

Information was gathered on respondent perceptions concerning specific sections of the Charter deemed to be of the greatest relevance to schools. However, neither the Charter nor terms associated with it were mentioned in the situations or in the statements that accompanied each of the situations. The respondents were asked whether they agreed or disagreed with each of a set of statements.

The historical context of the Charter provides an introduction for the study. Two chapters are devoted to tracing the approach the courts used in protecting collective and individual liberties, such as political, civil, economic, legal, egalitarian, and linguistic, of Canadians and the political events that led to the development of the Charter.

Regardless of the fact that the Charter was not mentioned, it is significant that most of the respondents surveyed or interviewed demonstrated an instrinsic sense of fairness and justice. There were, however, recurring indications that most respondents might have difficulty in the application of these values to some specific cases.

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CHAPTER 1

Introduction

Teachers, principals, superintendents, Department of Education personnel, and trustees interact with individual students and with groups or classes of students. They directly and indirectly interact with and affect the rights of these individuals during a portion of their lives. Educator and trustee perceptions regarding the rights and freedoms of pupils and parents implied by the principles enunciated in the Canadian Charter of Rights and Freedoms (Charter) need to be ascertained as Canada embarks on a major shift of emphasis in the protection of individual and group rights.

According to Anderson (1983:30), a shift from "exclusive unrestricted control by provinces over education to constitutional recognition of individual rights and judicial intervention and priority setting in education" occurred with the enactment of the Charter. Moreover, prior to 1982, provincial control over education was limited under section 93 of the Constitution Act, 1867 (formerly called British North America Act, 1867). Denominational, separate or dissentient school rights and privileges that "exist[ed] by Law at the Union or [was] thereafter established by the Legislature of the province" were protected. The protection of these rights and privileges was restated in section 29 of the Charter. However, the enactment of the Constitution Act, 1982, with the inclusion of minority language educational rights in the

Charter, further constrained the powers of the provinces by recognizing the rights and freedoms of parents regarding the choice of the language of instruction for their children.

Statement of Purpose

This study documents the perceptions of Alberta school authorities concerning some of the rights and freedoms of pupils and parents in order to discover the extent to which the normative beliefs and attitudes of school authorities are in accordance with the Charter.

Rationale for the Study

Major changes have taken place concerning the rights and freedoms of all Canadians. Canada has entrenched certain rights and freedoms for individuals. These rights constrain the legislative powers of governments. According to MacKay (1984:296), within the meaning of section 32, "most actions of school authorities are likely to be considered government action." He noted in Blaikie v. Attorney General of Quebec (1978) that "the Supreme Court of Canada did take judicial notice of the growth and importance of administrative agencies" (1984:17).

In R. v. H. (1986), Justice Dechene of the Alberta Court of Queen's Bench stated that the Charter did not need to apply because the Young Offenders Act adequately protected the accused. He added, as an orbiter dictum, that the Charter would not apply to principals and teachers on the facts of this case. However, in R. v. James Michael G (1986), the Ontario Court of Appeal stated the opposite, namely that "the principal and other teachers are subject to the Charter.. . ." The Supreme Court of Canada, in R. v. Jones (1986) ruled that the Charter's sections 2(a) and 7 had not been violated by specific sections of the School Act. The Court did not state whether the Charter applied to school jurisdiction. In 1988, the British Columbia Court of Appeal ruled that, in Douglas/Kwantlen Faculty Association v. Douglas College, the college "was subject to the Charter because it was a delegate of the government to further government policy with respect to post-secondary education." The role of the arbitrator and "whether or not the arbitrator was a court of competent jurisdiction . . . did not arise."

This assumption that the Charter does apply was further reinforced with the 1988 ruling of the Board of Reference case in which the presiding judge, in H. Johnson v. County of Ponoka Board of Education (1988), ruled that the Charter applied to school boards and board policies.

If school authorities, such as teachers, principals, superintendents, and trustees, fall within the Charter's restrictions, then school authorities ought to be cognizant of, and in accord with, the spirit implicit in the principles enunciated in the Charter.

Furthermore, according to Judge Stevenson, the Charter established a new "tenor." Judge Stevenson (1983:1-2) stated that

> the whole tenor is provocative - it shifts the focus of Canadian lifestyle to the rights of the individual and individual classes within that lifestyle - as opposed to the previous social attitudes of doing what was right for the majority.

This study builds on informed legal opinion and research that was undertaken prior to and since the patriation and proclamation of the Constitution Act, 1982 containing an amending formula and a Charter. This study should provide information that is presently not readily available to educators.

Statement of the Problem

According to section 32, the Charter applies to the legislative and governing actions of Parliament and the Government of Canada, the legislatures and governments of each province or territory, but not the actions of private individuals. Furthermore, the Charter restricts state actions with respect to "classes of persons." For example, section 29 provides that "nothing in the Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect to denominational, separate or dissentient schools" that are mentioned in section 93 of the Constitution Act, 1867.

The administrative actions or decisions of publicly funded school authorities, such as public and separate school systems, may also be perceived as engaged in matters that are bound by the Charter. These matters will become increasingly clear as specific cases are adjudicated by judicial and quasi-judicial bodies.

This study, therefore, addresses the following problem:

> What are the perceptions of Alberta school authorities regarding the rights and freedoms of pupils and/or parents implicit in the principles enunciated in the Charter?

Sub-Problems

To discover the extent to which the perceptions of school authorities are consistent with the spirit implicit in the principles enunciated in the Charter, this study addresses four sub-problems. They are as follows:

1. What are the perceptions of school authorities concerning "Legal Rights" of pupils in the school in the context of the Charter?
2. What are the perceptions of school authorities concerning "Equality Rights" of pupils in the context of the Charter?
3. What are the perceptions of school authorities concerning "Minority Language Educational Rights" of parents and the "multicultural heritage of Canadians" in the context of the Charter?
4. What are the perceptions of school authorities concerning "Guarantee of Rights and Freedoms" and "Fundamental Freedoms" of pupils in the school in the context of the Charter?

Delimitations

The gathering of data was delimited as follows:

1. To surveying the perceptions of school authorities concerning the rights and freedoms of the pupil and/or parent within the context related to sections 1, 2, 7, 8, 15, 23, and 27 of the Charter, even though certain aspects of, for example, common (civil) law and/or criminal law overlap with those sections being researched.
2. To surveying a sample of school authorities of the public and separate school jurisdictions of Alberta

and interviewing public and separate school authorities, persons holding teacher certification employed by the Department of Education, the Alberta School Trustees' Association, the Alberta Catholic School Trustees' Association, and the Alberta Teachers' Association.

3. To omitting all direct reference to the Charter in the wording of the survey questionnaire.

4. To restricting the interviews of participants to the greater Edmonton area.

5. To basing the development of the situations and statements on earlier interpretations from mostly Canadian lower court cases, American precedents, commentaries, and learned opinions.

Limitations

The study was limited by the following constraints:

1. The Charter was enacted in 1982. Charter rulings are ongoing. It is probable that the interpretations placed on certain specific sections may be altered as the Supreme Court of Canada interprets the meaning of these sections within the context of the Charter as a constitutional document.

2. The study was limited by the identification of, and access to, relevant documentary materials.

3. The study was limited by the willingness of key participants to be surveyed and/or interviewed after receiving written assurance of the confidentiality of the responses and their ability to accurately recall past events and understandings central to the study.

4. The study was limited by the depth of the information available to each of the participants concerning the rights and freedoms of the pupil and parent when answering the questionnaire or being interviewed.

5. The questionnaire utilizes the Thurston Scale format which forces the subject to endorse or reject the statement. There is, therefore, the possibility of misinterpretation of the statement or the possibility that the respondents may not be satisfied with the agree-disagree response options.

6. The study was further limited by the fact that the questionnaire does not include any pre-set agreement

on terminology.

7. This study was further limited by a failure to include a balanced set of school-relevant items relating to fundamental freedoms.

Assumptions

The following assumptions were basic to this study:

1. That the Charter applies to schools.
2. That the situations developed for the questionnaire are relevant to the intentions of the Charter.
3. That the statements that follow each of the situations reflect the intentions of the Charter.
4. That the findings reflect only the respondents' opinions.
5. That the choice of sections 7, 8, 12, 15, 23 and 27, and 1 and 2, in that order, represents the sections that may have the greatest relevance to schools.

Definitions of Terms

Charter

The Canadian Charter of Rights and Freedoms is a constitutional document. It is the supreme law of Canada and not merely an ordinary statute (Anderson, 1983:30).

Patriation

The term "patriate" or "patriation" apparently first appeared during the federal-provincial constitutional struggle to transfer, to Canada from the United Kingdom, the British North America Acts. For purposes of this study, the term is used to describe the act of transfer, from the United Kingdom to Canada, of the exclusive right of Canada to rule itself as a sovereign nation.

School Authorities

School authorities include teachers, principals, school superintendents or equivalent positions, school board trustees, and personnel holding teacher certification employed by the Department of Education, the Alberta Catholic School Trustees' Association, the Alberta School Trustees' Association, or the Alberta Teachers' Association.

Perception

"Perceptions" refers to the reactions of respondents to the survey questionnaire and during the interviews in which their opinions on educational issues were sought.

School Administrator

School administrators are the professional individuals whose function is to administer a school jurisdiction or a specific school.

State Action

The term "state action" refers to the actions of federal and provincial governments, of school boards and their employees.

Rights

The following statement by MacKay (1984:7) best describes this term:

> "Rights" is the label that has been used to refer to those interests that have acquired sufficient societal acceptance to be protected by the Canadian legal structure.

Legal Rights

"Legal rights" commonly refers to those rights which individuals possess in their contact with the police and the judiciary. Since 1982, we also use the term in reference to the Charter when discussing "the right to life, liberty and security of the person," found in section 7; "the right to be secure against unreasonable search and seizure," found in section 8; "the right to be presumed innocent until proven guilty according to law," found in section 11; and "the right not to be subjected to any cruel and unusual treatment or punishment," found in section 12.

Equality Rights

McDonald (1982:4) states that,

> equality rights are often referred to as human rights. Such rights are meant to prevent discrimination on the basis of such factors as age, race or religion with the goal that everyone regardless of such factors be treated equally.

Further to McDonald's definition, the term is also used with reference to affirmative action found in section 15(2) and in reference to rights "guaranteed equally to male and female persons" found in section 28 of the Charter.

Linguistic Minority Rights

The term is restricted to the meaning contained in section 23(3) of the Charter, with reference to English- or French- speaking groups.

Heritage Languages

The term is used with reference to linguistic or ethnic groups other than English and French, for under section 27 of the Charter, "the preservation and enhancement of the multicultural heritage of Canadians" is also addressed.

Pupils

The term is used to include all children who are students in the educational system from early childhood to senior high school.

Public and Separate

Alberta has one "publicly" funded provincial school system. Under the provincial school system, locally elected school boards administer provincially established jurisdictions. Furthermore, at the local level, a separate school board can be established for the minority, defined as "Catholic" or "Protestant" within the same geographic boundary as that of the existing public school board.

Research Literature that Guided the Study

Various approaches suggested in the literature on quantitative and qualitative research methodologies were reviewed. For example, Mintzberg suggested a research approach which he defined as "Emerging Strategy". Bogdan and Biklin and Stake suggested an approach called the "Case Study."

Emerging Strategies.

Mintzberg suggested that a research design need not be restricted exclusively to quantitative data-gathering methodologies:

> research has relied on simple - in a sense, inelegant - methodologies. The field of organization theory has, I believe, paid dearly for the obsession with rigor in the choice of methodology. Too many of the results have been significant only in the statistical sense of the word. In our work, we have always found that simpler, more direct methodologies have yielded more useful results (1979:583).

Mintzberg (1979:587) also stated:

> I believe that the researcher who never goes near the water, who collects quantitative data from a distance without anecdote to support them, will always have difficulty explaining interesting relationships. . . . Increasingly in our research, we are impressed by the importance of phenomena that cannot be measured - by the impact of an organization's history and its ideology on its current strategy, by the role that personality and intuition play in decision making. To miss this in research is to miss the very lifeblood of the organization. And missed it is in research that, by its very design, precludes the collection of anecdotal information.

Mintzberg's caution about the use of quantitative studies influenced the research design of this study. The first phase of the study was quantitative in nature. A series of situations were described, followed by belief statements to which respondents were asked to react by circling the "agree" or "disagree" response.

The second phase of the study was qualitative. A sample of school authorities who had not received questionnaires were interviewed. The interviewer attempted to ascertain how school authorities perceived the rights and freedoms of pupils and/or parents and how these normative beliefs and attitudes were in accordance with the spirit implicit in the principles enunciated in the Charter. The school authorities interviewed were encouraged to relate case studies that might further explain their perceptions of the rights and freedoms of pupils and/or parents.

Case Study Approach.

Bogdan and Biklin, Stake, Hofferbert, and Shaw advocated a qualitative method of research, which they termed the "case study approach."

A case study may be defined as "a detailed examination of one setting, or one single subject, or one single depository of documents, or one particular event" (Bogdan and Biklen, 1982:58). Stake (1978:6) suggested that

> an institution, a program, a responsibility, a collection, or a population can be the case. This is not to trivialize the notion of "case" but to note the generality of the case study method.

Furthermore, according to Stake (1978:5), case studies are

> useful in the study of human affairs because they are down-to-earth and attention-holding. . . . I claim that case studies will often be the preferred method of research because they may be epistemologically in harmony with the reader's experience and thus to that person a natural basis for generalization.

The case study method capitalizes "upon the natural powers of people to experience and understand." Specific strengths of the case study approach or method are also noted by other authors. Hofferbert (1974:138) suggested that the case study approach allowed for "the dynamic of the process" to be "richly and lucidly" illustrated. In turn, Shaw (1978:2) stated that the case study approach focused attention on how particular groups of people deal with specific problems. Stake (1978:7) best described the reasons for using the case study approach when he stated that

> Its best use appears to me to be for adding to existing experience and humanistic understanding. Its characteristics match the "readiness" people have for added experience. As Von Wright and others stressed, intentionality and empathy are central to the comprehension of social problems, but so also is information that is holistic and episodic. The discourse of persons struggling to increase their understanding of social matters features and solicits these qualities. And these qualities match nicely the characteristics of the case study.

The suggested approach was utilized in the interview part of the study. During the interviews, the respondents were encouraged to relate cases which they, as school authorities, had to resolve. Each case was utilized not only as a perception check to the questionnaire but also as a means to obtaining information not available from the questionnaire. The suggestions of Bogdan and Biklin and Stake influenced the approach of this study. In other words, the data collected and tabulated assisted the researcher in analyzing and interpreting the perceptions of school authorities concerning the rights and freedoms of pupils and/or parents implicit in the principles enunciated in the Charter.

Research Methodology

Phase One: The Questionnaire

The study was divided into two phases. Phase One focused on gathering perceptions of school authorities concerning the rights and freedoms of pupils and/or parents. A questionnaire was used to gather the data because it permitted the sampling of a large segment of school authorities in Alberta. The necessary information for formulating the questionnaire was taken mainly from the legal and educational commentaries concerned with the "legal rights," "equality rights" of individuals and "minority language educational rights" of parents as enunciated in the Charter. Other sources, such as the official publications of the Government of Canada and the various provinces, the Royal Commission on Bilingualism and Biculturalism, the Supreme Court of Canada hearings and decisions, and other provincial court hearings and decisions, were also used to develop the questionnaire.

A nine-page, two-part survey questionnaire was developed for the study. Part one of the questionnaire asked participants to respond to a series of belief statements that accompanied each situation. Each of the situations was generally linked to a specific section of the Charter. For example, as is shown in Appendix A, Situation #1 dealt with student control, Situation #2 dealt with locker search and Situation #9 dealt with access to specialized classes.

The second part of the questionnaire attempted to elicit the respondent's personal responses to a series of belief statements that were linked to various sections of the Charter.

Various sections of the Charter were also used to develop the statements. For example, sections 1 and 7 of the Charter were used to develop Situation #1, and sections

7 and 12 guided the development of statements dealing with Situation #4. These sections read as follows:

> 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
>
> 1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
>
> 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

In other words, the belief statements dealing with Situation #1 attempted to link the issue of pupil control to the principles enunciated in specific sections of the *Charter*. However, the mention of the *Charter* and such words as "fundamental justice" that are associated specifically with the *Charter* were purposely omitted in the questionnaire because the purpose of the study was to gather the perceptions of school authorities concerning the rights and freedoms of the pupils and/or parents, not perceptions of what the *Charter* states.

Phase Two: The Interviews

In Phase Two, the interview format was used to clarify some of the findings of the questionnaire used in Phase One. School authorities not surveyed by the questionnaire were asked whether they agree or disagree with selected situations and statements deemed to need further elaboration. Furthermore, the interview format allowed for individual biases to be openly discussed, evaluated and reported. The human involvement in the study was, therefore, deemed to be an essential component of the study.

Specifically, interviews with school authorities not surveyed by the questionnaire were sought. Included in this grouping were school trustees; persons holding teacher certification employed by the Department of Education, the Alberta School Trustees' Association, the Alberta Catholic School Trustees' Association and the Alberta Teachers' Association; school superintendents; and elementary, junior and senior high teachers and principals. Each respondent was asked to reflect on the same situations as those presented in the questionnaire.

The interviewed school authorities were encouraged to respond to all of the selected situations and statements. The school authorities were also encouraged to elaborate on any situation and statement(s) they wished.

The extra questioning of the respondents was based on the analysis and interpretation of the questionnaire data. In other words, the interviews were used to supplement the data produced by the questionnaire.

Research Procedures

In Phase One of the study, a survey questionnaire was used. Validating the instrument for the clarity of its statements was an essential component of the study. Interviews with school authorities were undertaken in Phase Two of the study. It was preferable, in the interview part of the study, to refer to trustworthiness rather than to validity and reliability of research design.

Validity and Reliability

During the development of the questionnaire, each item was identified with a section of the Charter. Thus respondents' answers were analyzed relative to a section of the Charter. The questionnaire, with the specific sections of the Charter indicated, is detailed in Appendix B.

A minimum of three school authorities representing some of the groupings to be sampled were interviewed with the survey questionnaire. Their suggestions were noted and were reflected in the final draft. Furthermore, two of the school authorities, a superintendent (or equivalent) and a field consultant, were asked to review the instrument to ensure that it covered the critical areas as seen by an educator other than a specific school administrator or teacher.

The survey questionnaire was divided into situations. Each situation was described. The respondents were asked to confirm or reject each of a set of statements by circling "Agree" or "Disagree." The responses were then reported in percentages. Because the Alberta school authorities were chosen from a stratified random sample, the differences of opinion among the various groups was deemed to be an essential element in the reporting of the data. According to Popham and Sirotnick (1973:273-274), the Chi-Square test can be used to

> check the assumption of a particular population's normality, by seeing whether a sample drawn from that population departed significantly from the shape of a normal distribution . . .. In brief, the (Chi-Square) x^2 test yields a value which is produced by the disparity in each of the data categories or cells between expected and observed frequencies. If the sample distribution were perfectly normal, there would be no difference in any category between expected and observed frequencies and the resulting value of x^2 would be zero. The greater the disparity between the observed and the expected frequencies the larger x^2 becomes . . .. As in all chi-squares analyses, the actual frequencies are contrasted with the expected frequencies in such a way as to yield a x^2 value which is subsequently checked for statistical significance according to a chi-square probability curve.

Research Trustworthiness

As was outlined above, in Phase Two of the study, another sample of school authorities was interviewed. The questions to be asked and the format for the interview were determined after the survey data had been analyzed. After the analysis of the data was completed, differences of opinion among the various groups became apparent. There were also some other interesting differences of opinion among the groups that needed further study. These differences of opinion formed the basis for Phase Two of the research. The questionnaire, which included mainly those statements on which the groups held different opinions, was sent to the school authorities prior to the interview. During the interview, the school authorities were encouraged to tell why they agreed or disagreed with the statements within the context of the described situation.

Guba's (1980:10-11) four aspects of research trustworthiness -- credibility, transferability, dependability, and confirmability -- were used as a guide in developing the interview format and question procedures after the questionnaire had been analyzed. As a consequence, the same format as used in formulating the questionnaire was used. A continuity between Phase One and Phase Two could be maintained. Replication and comparison of the statement answers were possible. Briefly defined, the four aspects of research trustworthiness with their guiding questions that assisted in the study are as follows:

Credibility. The term refers to believability or reliability. In other words, "do the data sources find the inquirer's analysis, formulation and interpretations to be credible" (Guba, 1982:246)?

Transferability. The term refers to generalizability. The objective of the study was to gather and build a "thick description" (Guba, 1982) of school authority perceptions concerning the rights of the pupil and/or parent in relation to education. From the description reported, are the findings of the school authority perceptions transferable?

Dependability. The term refers to replication. According to Guba (1978:71), "if credibility is adequately demonstrated, simultaneously, dependability will be also." In the interview phase of the study, school authorities not surveyed by questionnaire, were asked to answer and elaborate on the same situations with specifically selected accompanying statements. Can the interview process, which allowed for elaboration or clarification of their answers during the interview, be replicated?

Confirmability. The term refers to objectivity. Will using triangulation procedures -- "cross-checking for internal consistency or reliability" (Jinks, 1979:603) -- to validate the data, and will maintaining research documents to assist in footnoting the reports, enhance the fairness and confirmability of the data?

Data Collection

The data on the perceptions of school authorities concerning the rights and freedoms of the pupil and/or parent were gathered mainly from a survey questionnaire sent to a stratified random sample of 310 Alberta school authorities. Included in this sample were: (1) 20 school trustees, 25 Department of Education personnel, and 25 school superintendents; (2) 120 elementary, junior and senior school principals; and (3) 120 elementary, junior and senior high teachers.

The Office of the Deputy Minister of Education, upon receipt of a formal letter from the dissertation committee, supplied a list of persons from which to draw samples for the questionnaire survey.

The Executive Secretary of The Alberta Teachers' Association and the Director of the Alberta School Trustees' Association examined the proposal and endorsed the study. Copies of the letters sent to the various groups are included in Appendix C.

The questionnaires were numbered. All participants were given written assurance of the confidentiality of the responses as well as a promise that they would receive a summary of the findings. However, because the questionnaire was sent in late April and May, no follow-up letters were sent to the participants. The letter of explanation included statements of support from the two Associations.

After the questionnaire phase of the study was completed, interviews with other school authorities constituted another important source of data for determining school authority perceptions of the rights and freedoms of the pupil and/or parent. These interviews constituted Phase Two of this study.

Interviews with a sample of about 20 school authorities, not surveyed by questionnaire, were conducted. These samples, other than officers of Associations, were drawn from the remaining stratified random sample of school authorities supplied by the Department of Education. They were chosen on the basis of representative groups and of closeness to metro Edmonton. Specifically, the selected interviewees originally included: 12 elementary, junior and senior high school teachers and principals; two school superintendents; two trustees; and one person from each of the Department of Education, the Alberta Catholic School Trustees' Association, the Alberta School Trustees' Association and the Alberta Teachers' Association. Each respondent was asked to reflect on the same situations as given in the questionnaire. Where statistically significant differences of opinion occurred among groups of respondents to the questionnaire or where a statement needed further clarification, the respondents were also asked to reflect on specific statements. The phrase "significant difference" was used as a statistical term. As Peters (1985:3) explains:

> When we speak of a significance level we are using a statistical term. Essentially what we are doing is admitting that we may be making an error when we say that two groups are different. The probability of our making an error is indicated by the significance level incorporated into our statistical calculations. When we use a significance level of .05 we are saying that there is a probability that we are wrong on no more than five cases in every hundred.

Prior to the interviews, the anonymity of the respondents was assured. It was explained to the interviewees that the statements being reviewed were chosen because the differences among groups of respondents were significant in statistical terms or of special interest. However, the results of the questionnaire survey were not mentioned during the interview. Moreover, each situation with the accompanying statements was reviewed thoroughly by some of the respondents.

Data Reporting

Information was gathered on how the respondents perceived pupil control in the context of fundamental justice, search and seizure and cruel and unusual treatment or punishment, which is labelled "legal rights" in the Charter. Respondent perceptions are reported in chapters 4, 5 and 6 respectively. Information was also gathered on equality rights, linguistic and heritage rights, and guaranteed rights and freedoms and fundamental freedoms. These are labelled "Equality Rights," "Minority Language Educational Rights and General (but known as Multicultural Heritage), and "Guarantee of Rights and Freedoms" and "Fundamental Freedoms" in the Charter. Respondent perceptions are reported in chapters 7, 8 and 9 respectively.

The respondents were asked to identify their position as a school authority (for example, a teacher or trustee), tell whether they were public or separate school respondents, and give the number of years they had been a school authority. Table 1 shows that 67.1 per cent of the 310 questionnaires were answered. Of the 208 questionnaires received, 74.1 per cent were completed by principals or teachers while the remaining 25.9 per cent were completed by superintendents, Department of Education personnel or trustees. The questionnaire was answered by 70.2 per cent of the respondents from public school jurisdictions and 18.3 per cent from the separate school jurisdictions. The distribution of public and separate school respondents was approximately proportional to that of the Alberta public and separate school population.

The percentage of respondents agreeing or disagreeing with the statements of the questionnaire are reported in tables. Differences among subgroups are reported only where these were found to be statistically significant.

In this study, all statements with a statistical

Table 1
Distribution of the School Authority Respondents

	Questionnaire # Distributed	# Returned	% Returned	% of Distributed
Position				
Teachers	120	65	54.2	21.0
Principals	120	89	74.2	28.7
Superintendents	25	19	76.0	06.1
Department of Education	25	24	96.0	07.7
Trustees	20	11	55.0	03.6
Total	310	208	67.1	67.1

	Questionnaire #	Questionnaire % of total Respondents	Interviewed #	Interviewed % of total Respondents
Position				
Teachers	65	31.3	5	26.3
Principals	89	42.8	6	31.6
Superintendents	19	09.1	2	10.5
Department of Education	24	11.5	1	05.3
Trustees	11	05.3	2	10.5
Associations (ATA, ASTA, ACSTA)			3	15.8
Total	208	100.0	19	100.0
Type of School Jurisdiction				
Public	146	70.2	8	42.1
Separate	38	18.3	7	36.8
Department of Education	24	11.5	1	05.3
Associations -ATA, ASTA, ACSTA-			3	15.8
Total	208	100.0	19	100.0
Years of Professional Experience				
0 - 5 years	20	09.6	0	0.0
6 - 10 years	32	15.4	6	31.6
11 - 20 years	74	35.6	7	36.8
21 or more years	82	39.4	6	31.6
Total	208	100.0	19	100.0

significance level of 0.05 are reported in detail. "When we use a significance level of 0.05, we are saying that there is a probability that we are wrong on no more than five cases in every hundred" (Peters, 1985). The Chi-Square test was used to identify statements in which there were differences of opinion among the respondents. The Chi-Square test program was used because it indicates "whether there is a relationship, and how strong it is" (Erickson and Nosanchuk, 1977:261). The Chi-Square computer program also facilitated the analysis task by reporting the percentage who agreed and disagreed in each category: position (principal, trustee, superintendent, teacher, department of education personnel), or jurisdiction (public or separate) and years of professional experience.

CHAPTER 2

Antecedents to the Canadian Charter of Rights and Freedoms

The purpose of this chapter is to trace how the courts attempted to develop an approach to protecting the collective and/or individual liberties of Canadians, such as political, civil, economic, legal, egalitarian and linguistic, and the political events that led to the development of the Charter. In other words, the Charter is placed in its historical context.

About 115 years after the creation of Canada as an independent nation, Canada gained complete autonomy over its constitution. The patriation of the Constitution Acts (formerly known as the British North America Acts) and the inclusion of an amending formula and the Canadian Charter of Rights and Freedoms (Charter) marked the beginning of a new constitutional era for Canada. From the time of confederation up to the inclusion of a Charter, laws enacted by Parliament and the provincial legislatures were supreme within their field of competency. Prior to 1982, the British statute called the British North America Act, 1867 and subsequent amendments divided the legislative powers between the federal and provincial governments. Education, for example, was a provincial matter. No limits were placed on the provinces' power to enact legislation relative to education, except as limited by statute at the time of the union of each of the provinces and by the courts.

According to Gall (1987:30),

> scholars of the late 1950s were interested in whether any of the traditional kinds of civil liberties lay within the jurisdiction of one sovereign legislative body as opposed to the other under the Constitution Act, 1867.

Gall (1987:30) further explained that legal civil liberties

> tended to fall within the federal legislative scope, whereas the economic civil liberties tended to fall within the provincial legislative scope.

The Development of Civil Liberties

Canada's political development has been, in the words of Manley-Casimir (1983:3), "quintessentially legal." The development of the West, for example, occurred under the rule of the Hudson's Bay Company. The Canadian Pacific Railway and the North-West Mounted Police preceded the vast majority of settlers. Furthermore, citing Naegele (1961:5), Manley-Casimir (1983) added that Canada emphasized the "preservation of social order in an elitist and traditional society" which reflected Canada's tradition that the state was there to establish peace, order and good government. Canada's tradition is further reflected in its constitutional approach toward fundamental rights and freedoms.

The Preamble of the Constitution Act, 1867 (formerly called B.N.A. Act, 1867) states that Canada was to have "a constitution similar in principle to that of the United Kingdom." The Constitution Act, 1867 was, however, silent on what constituted "a constitution similar in principle to that of the United Kingdom."

However, the Constitution Act, 1867 established some matters explicitly and others implicitly. It explicitly established provisions for the protection of certain language and religious rights as well as the delegation of certain authority to the provincial legislatures and to Parliament. For example, the French and English languages were given equal status in Parliament, federal courts, and in the legislature of Quebec.

Furthermore, guarantees for civil liberties were implicit rather than explicit. Apparently, it was assumed, according to Tarnopolsky (1975:30), that the

> heritage of English Constitutional law, such as the Magna Carta and the Bill of Rights, among others . . . and English common law . . . were all intended to be incorporated through the preamble of the BNA Act [Constitution Act].

Tarnopolsky, commenting on this implied "Bill of Rights," further stated that, according to British tradition,

> the right of free [people] which could not be taken away except by the courts or as passed by a sovereign and popularly elected Parliament, and its protection for the individual through instruments such as the Habeas Corpus Acts, were all intended to be incorporated

in the Constitution Act, 1867 preamble of "with a constitution similar in principle to that of the United Kingdom." In other words, according to British tradition, the rights of a free person were limited only by what was forbidden by law.

As a consequence, the development of many of our freedoms came about from the "inaction of government" (Tarnopolsky, 1975:31). The laws established limits of freedom and not rights of freedom. According to Dicey (cited in Tarnopolsky, 1975:37),

> one is free to say anything that which the laws do not forbid, and one is free to associate with anyone with whom it is not forbidden to associate, and one is free to worship in any manner which is not proscribed.

The limits of freedom were, in most cases, governed by the Criminal Code of Canada. For example, censorship of the press was attempted by the Alberta government in 1937. In 1938, the Alberta statutes were referenced to the Supreme Court of Canada. The Attorney-General of Canada was successful in having the Alberta Press Bill declared ultra vires. Three main issues were addressed by some of the justices. First, the Alberta Press Bill was ultra vires because it was ancillary to and dependent upon two other bills of the Alberta legislature. These two bills, The Bank Taxation Act and The Credit of Alberta Regulations Act, were declared ultra vires. Consequently, the Alberta Press Bill was also declared ultra vires. Second, two of the justices who ruled that the bill was ultra vires further gave an opinion (obiter dictum) that the Alberta Press Bill was an infringement of the freedom of the press as protected by the preamble of the Constitution Act, 1867. Furthermore, the Alberta Press Bill was ultra vires because freedom of the press and censorship were matters to be dealt with by the Criminal Code. The Bill, therefore, encroached on Parliament's criminal law jurisdiction.

In 1953, Saumur, a Jehovah's Witness, requested that the Supreme Court of Canada declare that bylaw 184 of the City of Quebec was infringing on his rights to worship his God and that it did not allow him to express freely his opinions. In this judgment, Saumur v. Quebec (1953), four of the justices stated that the bylaw was ultra vires because it encroached on the criminal law powers of Parliament. Four of the justices believed the bylaw regulated street control and was within the powers of the province. The court was deadlocked; the reasoning of the ninth justice, who also stated that the bylaw was ultra vires, became the reasoning for the ruling of the court. The issue of jurisdiction was ignored. Instead, the pre-Confederation Freedom of Worship Act was noted as the reason for declaring the bylaw ultra vires even though freedoms of speech and religion were generally protected by the Criminal Code provisions against sedition, blasphemy and/or obscenity.

In Switzman v. Elbling (1957), (also referred to as the Padlock Law case of 1957), the Supreme Court of Canada stated that the right to dissent (freedom of circulation of opinions) was protected by criminal law and was not a civil matter to be protected by the provincial legislatures. However, in this case, the restricting of fundamental civil liberties was also cited as a factor in declaring the Act Respecting Communistic Propaganda ultra vires. The act had declared the use of a house to print, publish or distribute documents on communism or bolshevism to be illegal. The house was, therefore, to be padlocked. Furthermore, an opinion (obiter dictum) was stated to the effect that the power of abrogating the right of discussion and debate was beyond the powers of both levels of government.

Freedom of religion was confirmed in Chabot v. Les Commissaires d'écoles de Lamorandière (1957). In this case, the judges used natural law to override the positive law (written law) of a province. Bargen (1961:99) stated that

> it was on the basis of natural law, therefore, that the Court was able to decide that section 221 (3) of the Education Act did not intend to abrogate religious liberties, even though the positive law could be interpreted to do so.

Chabot, a Jehovah's Witness, had been sending his two children to the public school in the predominantly Catholic municipality of Lamorandière. The commissioners determined that all the children were to follow the entire course of studies, which included religious instruction. Chabot "refused to allow his children to comply with these regulations; so the children were expelled from the school" (Bargen, 1961:94). Mr. Duplesis, the Attorney-General of Quebec and the lower courts upheld the validity of the Education Act and the regulations made under the Act. On appeal, the Court of Queen's Bench, however, affirmed the parents' right to have the children attend the public school without their children being compelled to attend religious instruction classes contrary to their beliefs. Some of the reasoning given by the court is fascinating but, of importance, the Court stated ". . . no particular regulation will be enforceable if its application results in the denial of any of the fundamental rights of man" (Bargen, 1961:99).

In summation, in two of the examples, the Supreme

Court of Canada stated that the civil liberties of the individual had paramountcy over the Parliament of Canada and the legislatures of each of the provinces, whereas, in another case, the preamble of the *Constitution Act, 1867* protected the fundamental rights and freedoms of individuals. In the third example, a minority of the justices of the Quebec Court of Queen's Bench, Appeal Side, stated that the offending provincial legislation or that of their delegated municipal governments encroached on Parliament's power to enact criminal law for all of Canada. However, Mr. Justice Fauteux's statement in *Switzman* v. *Elbling* (1957) seems to be the best description of Canada's traditional approach to protecting the individual rights and freedoms of the citizenry. Mr. Justice Fauteux (cited in Tarnopolsky, 1975:39) stated that

> Seul le Parlement, légifinant en matière criminelle, a competence pour décreter, définir, défendre et punir ces matières d'un écrit ou d'un discours qui, en raison de leur nature, lesent l'ordre social ou la securité de l'Etat.
>
> [(translation) Only Parliament can legislate on matters of criminal law and has the competence to enact, define, defend and punish in such matters to protect the social order and the security of the nation.]

The reference to criminal law, as noted above, points to the fact that the *Criminal Code* incorporated a number of civil liberties either directly or indirectly. Tarnopolsky (1975:56) pointed out that as to the use of power allocation,

> it is in the *Criminal Code* that one finds some of the great traditional protections for the liberty of the subject. Thus, for instance, the powers of arrest, and the limitations thereon, and warrants for arrest, search and seizure, are covered by the *Criminal Code*. The duties of a police officer making an arrest, which were authoritatively set out in the great English case of Christie and

> Leachinsky, are at least partially embodied in the Criminal Code. Furthermore, by s. 7(3) of the Code, all the common law principles relating to any justification, excuse or defence which were available to an accused when charged with a criminal offence are retained except as otherwise specifically altered. Here is the present basis for the various presumptions for the protection of the subject accused of crime, such as the basic presumption of innocence until proved guilty, and others such as that against double jeopardy. Some of the safeguards in criminal procedure are set out in the Canada Evidence Act. All these aspects of legal civil liberties are within federal jurisdiction.

Canadian Bill of Rights

A further development occurred in 1960, when The Canadian Bill of Rights (Bill) was passed by the Parliament of Canada. Parliament passed the bill as a statute and not as an amendment to the then B.N.A. Act. Bill could, therefore, be amended by Parliament and did not have the force of law of an entrenched constitutional bill. Section 2 of the Bill was supposed to override any federal legislation that contravened it, unless the legislation especially exempted the statute from any such override. In any event, the Bill tended to be ignored by the courts because, according to Tarnopolsky (1975) and Glenn (1980:23), there was a reluctance on the part of the courts to be involved in "substantive law-creating functions." The Supreme Court made an exception in one case, namely the Drybones case (Russell, 1965; Tarnopolsky, 1975). In R. v. Drybones (1970), the Supreme Court declared that a section of the Indian Act was inoperative because it violated the "equality before the law" guarantee of the Bill. In the written judgment, two of the nine justices each included what seems to be a statement of principle. For example, Mr. Justice Ritchie (cited in Whyte and Lederman, 1977:4-121) defined equality before the law as follows:

> [it] means, at least, that no individual or group of individuals is to be treated more harshly than another under that law and I am therefore of opinion that an individual is denied equality before the law if it is made an offence punishable at law, on account of his [or her] race, for him [or her] to do something which his [or her] fellow Canadians are free to do without having committed an offence or having been made subject to any penalty.

Equally important was Mr. Justice Cartwright's statement (cited in Whyte and Lederman, 1977:4) that, if Parliament wanted the Bill to have paramountcy over other federal statutes, it should have a seventh line to the effect that "if any law of Canada cannot be construed and applied, it shall be regarded as inoperative or pro tanto repealed."[1] It would seem that the Supreme Court followed the dictum of Mr. Justice Cartwright because the Bill was not given any further prominence after the Drybones case.

Provincial bills of rights have also generally been given similar treatment by the courts to that of the Canadian Bill of Rights. Exceptions, however, also exist. For example, a provincial judge ruled in R. v. Wiebe (1978), also known as the Holdeman Mennonite Case, that the Alberta Bill of Rights, which guaranteed freedom of religion, overrode the Alberta School Act. Parents had the right, on proven religious grounds, to educate their children in the manner encouraged by their religious beliefs. As a consequence, the Minister of Education altered the authorized categories of schools in Alberta to allow for private schools taught by uncertified teachers. In this case, the Alberta Bill of Rights was successfully used in the lower courts but its validity was not tested by a superior court.

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[1] Those who drafted section 2 of the Canadian Bill of Rights said that no law of Canada should be "construed so as to abrogate, abridge or infringe upon any of the rights and freedoms herein recognized." This was not as strong a statement as Mr. Justice Cartwright apparently thought there should be in the bill.

In summation, the bills of rights in Canada seemed to have been set aside by the judiciary. Some of the justices also gave opinions (obiter dicta) that the understood rights suggested in the preamble of the Constitution Act, 1867 protected the civil rights of individuals but their opinions did not form the reasoning for the judgment. Instead, the judiciary seemed to prefer protecting fundamental rights within the provisions of the criminal law. An exception to this basic rule was the language issue.

Official Languages Act

The Official Languages Act R.S.C., 1969 and the Official Languages of New Brunswick Act, S.N.B., 1969 were challenged by L. Jones, M.P., the then mayor of Moncton in 1971. The two acts were subjected to a reference to the Supreme Court of Canada. In Leonard C. Jones v. A.G. Can., A.G. N.B., P.g. Que. (1971), the court was asked five questions on the constitutionality of both acts. The court unanimously declared them to be valid. Furthermore, the Supreme Court stated that the provisions of section 133 of the Constitution Act, 1867, which entrenched English and

French as the official languages of Parliament and the federal courts as well as the legislature and the courts of Quebec, could be expanded by Parliament and a legislature, but once expanded, could not be diminished either by Parliament or the legislature. This statement is significant because the Supreme Court ruled that governments could enhance rights contained in the Constitution Act, 1867, but once enhanced, the governments could not retreat and diminish such rights. In the area of language rights, the Official Languages Act was upheld and strengthened by the Supreme Court of Canada rulings.[2]

Second, the Jones (Official Languages) case is important because we again see a case in which the "Peace, Order and Good Government" (p.o.g.g.) principle stated in section 91 of the Constitution Act, 1867 is enunciated as the reason for the court judgment. Therefore, in Canada, wherever there is a gap in jurisdiction, the federal government apparently has authority. According to the late Chief Justice Laskin (cited in Hogg, 1977:245), the court used the gap concept in its reasoning on the Jones case because

> the court pointed out that since federal institutions and agencies

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[2] Mr. Justice Thorson, retired president of the Exchequer (Federal) Court of Canada, argued that the St. Laurent Constitutional amendment of Section 91(1) of 1949 prohibited Canada from either restricting or extending Section 133. Section 133 states that Canada can amend the federal constitution as long as it does not touch matters assigned exclusively to the provinces or "rights or privileges . . . granted or secured . . . as regards the use of the English or the French language." However, Mr. Justice Laskin did not agree with Mr. Justice Thorson's assertions. In fact, this seems to be a perfect example of using the "Peace, Order and Good Government" (p.o.g.g.) (gap-filling) provision to bypass the issue.

> are "clearly beyond provincial reach," they must be within federal reach under the opening p.o.g.g. words of section 91 on the basis of the purely residuary character of the legislative power thereby conferred.

Chief Justice Laskin thereby confirmed again the paramountcy of Parliament on any issue that was not specifically addressed in sections 91 and 92 of the Constitution Act, 1867. This kind of reasoning by the Supreme Court on the paramountcy of Parliament may have foreshadowed the final ruling on the patriation court challenges in the 1980s.

Patriation of Canada's Constitution

The road to patriation of the Constitution Act, 1867 continued unabated in the political arena while such acts as the Canadian Bill of Rights, provincial bills of rights, and the Official Languages Act were being tested in court. However, Canada found itself in a very different political arena from that of other countries. Canada had a constitution without an amending formula. Meekison (1983:101) stated that "a series of constitutional conventions evolved governing the process by which amendments were made to the constitution." The Parliament of the United Kingdom had to be involved in the amending process. Furthermore, according to Meekison (1983:100),

> Canada is the only country in the world which has had to resolve the constitutional dilemma of drafting an amending formula after its Constitution had evolved and the nation matured politically. Other countries tackle this problem at the time their constitutions are written.

Discussions to establish an amending formula began at the 1927 federal-provincial conference. Fifty-five years later, an amending formula was secured. The United Kingdom Parliament ended its participation in the constitutional amending process with the passing of the Canada Act, 1982. The Canada Act, 1982 is a British statute that renamed the British North America Acts (B.N.A. Acts) to Constitution Acts and contained, at the request of Canada, an amending formula and a Charter.

Four major events occurred between 1964 and 1981 that are of importance to us. The Fulton-Favreau formula, the Victoria formula, the Parti Quebecois election, and the Trudeau unilateral initiative resulting in the Supreme Court decision reflect the events that contributed to the final solution--the Constitution Act, 1982.

The Fulton-Favreau Amending Formula. According to a formula negotiated in 1964, the principle of unanimity had to be reached before any amendments could be made in matters affecting provincial legislative powers. Premier Lesage of Quebec rejected the arrangement on the basis that other constitutional issues were more important than an amending formula.

Victoria Amending Formula. In 1971, the Victoria formula was agreed upon, only to be scuttled by Premier Bourassa of Quebec. Under the Victoria formula, amendments could be approved in the following manner (Meekison, 1983:103):

> Amendments to the Constitution of Canada may from time to time

> be made by Proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assemblies of at least a majority of the Provinces that includes:
>
> (1) every Province that at any time before the issue of such Proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada;
>
> (2) at least two of the Atlantic Provinces;
>
> (3) at least two of the Western Provinces that have, according to the then latest general census, combined population of at least fifty per cent of the population of all the Western Provinces.

It is noteworthy to recall that eight of the 11 governments had changed after 1971. The commitment to the Victoria formula on the part of the new governments was not as great. Criticism over the issue of the "regions versus the provinces" continued. For example, according to Meekison (1983:104), "British Columbia sought to have its claim to a veto incorporated into the formula on the basis of its being the fifth region of Canada." Even though Quebec was blamed for scuttling the Victoria formula, its objections were not with the amending formula, but with provisions of a charter of rights. However, the rejection of the Victoria formula ended an era of constitutional negotiations. A new era in Canadian politics was about to begin.

Parti Quebecois Election. In 1976, the Parti Quebecois was elected in Quebec and the battle over Quebec independence began. The battle culminated in the Parti Quebecois government's losing the referendum for independence in 1980. During the Quebec battle, Trudeau, in 1978, unveiled his two-phase process to update and patriate the then B.N.A. Act. The Trudeau plan clearly challenged the provinces to negotiate a new deal or have Parliament unilaterally implement the changes under section 91(1) (p.o.g.g.) of the then B.N.A. Act. The supreme courts of Manitoba, Newfoundland, and Quebec were brought into the constitutional arguments. In the reference to the courts, the Manitoba and Quebec courts declared the federal action to be legal whereas the Newfoundland court found the federal action to be illegal.[1]

Supreme Court Ruling. The Supreme Court of Canada was finally asked to rule whether or not the federal government had the right, by convention and law, to unilaterally initiate and implement the changes. In the reference, Amendment to Constitution of Canada, the Supreme Court turned the issue back to the politicians in 1981. According to the Supreme Court, the federal government required, by convention, substantive provincial approval, but did not require, by law, provincial consent. In November, 1981, all but Quebec agreed to the terms of patriation of the B.N.A. Acts.

With the enactment of the Canada Act, 1982 by the Parliament of the United Kingdom, the B.N.A. Acts were renamed the Constitution Acts, contained an amending formula and a Charter were proclaimed. The Canada Act, 1982, other than Schedules A and B, reads as follows:

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[1] Manitoba Court of Appeal--by a majority of three to two judges stated that the federal unilateral action was legal.

Newfoundland Court of Appeal--by a unanimous vote of three, the court found the federal unilateral action to be illegal.

Quebec Court of Appeal--by a majority of four to one judges stated that the federal unilateral action was legal.

Of the 13 court judges who heard the case, seven sided with the federal government and six with the arguments of the provinces.

> An Act to give effect to a request by the Senate and House of Commons of Canada
>
> Whereas Canada has requested and consented to the enactment of an Act of the Parliament of the United Kingdom to give effect to the provisions hereinafter set forth and the Senate and the House of Commons of Canada in Parliament assembled have submitted an address to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose.
>
> Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present assembled, and by the authority of the same, as follows:
>
> 1. The Constitution Act, 1982 set out in Schedule B to this Act is hereby enacted for and shall have the force of law in Canada and shall come into force as provided in that Act.
>
> 2. No Act of the Parliament of the United Kingdom passed after the Constitution Act, 1982 comes into force shall extend to Canada as part of its law.
>
> 3. So far as it is not contained in Schedule B, the French version of this Act is set out in Schedule A to this Act and has the same authority in Canada as the English version thereof.
>
> 4. This Act may be cited as the Canada Act, 1982.

On March 8, 1982, the Canada Act received final approval from the British House of Commons, endorsement from the House of Lords on March 25 and assent by the Queen four days later. Canada's constitution was thereby patriated from the United Kingdom with an amending formula and a Charter.

Canada's independence was fully recognized, in law, on April 17, 1982, when Her Majesty Queen Elizabeth II came to Ottawa and proclaimed the Constitution Act, 1982. It is ironic that the three Members of Parliament (Trudeau, Ouellette and Chretien) who signed the document on behalf of the Government of Canada came from Quebec, the only province to withhold its support.

Amending Formula

With the proclamation of the Constitution Act, 1982, the search for an amending formula ended. Meekison (1983:107-108) summarized the six different means for securing amendments that are included in the Constitution Act, 1982. They are as follows:

1. amendments under the general procedure (Section 38)
2. amendments by unanimous consent (Section 41)
3. amendments which apply to some, but not all, provinces (Section 43)
4. amendments by Parliament alone (Section 44)
5. amendments by individual provincial legislatures alone (Section 45)
6. amendments without Senate approval (Section 47).

In other words, the amending formula does not include any special veto by Quebec or Ontario. The general amending formula requires the assent of Parliament and of two-thirds of the provinces that have, in the aggregate, at least 50 per cent of the population of all the provinces. In practical terms, this means that neither Ontario nor Quebec has a working veto. A working veto had been given to Ontario or Quebec alone in the previous amending formulae. In other words, the special constitutional status of Ontario and Quebec disappeared.

Meech Lake Accord. The 1987 Constitutional Accord, which was signed by the prime minister and all 10 premiers, changes the amending formula. If approved by Parliament and the provinces, as per the procedures outlined in Part V (sections 38 to 49) of the Constitution Act, 1982, sections 40 to 42 would be repealed. Section 40 (compensation) would read as follows:

> Where an amendment is made under subsections 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

Section 41 (amendment by unanimous consent) would read as follows:

> An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:
> (a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
> (b) the powers of the Senate and the method of selecting Senators;
> (c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;
> (d) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;
> (e) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;
> (f) subject to section 43, the use of the English or the French language;
> (g) the Supreme Court of Canada;
> (h) the extension of existing provinces into the territories;
> (i) notwithstanding any other law or practice, the establishment of new provinces;
> (j) an amendment to this Part.

The Meech Lake Accord also modified section 44 (Amendments by Parliament, section 46(1) (Initiation of Amendment Procedures) and section 47(1) (Amendment Without Senate Resolution).

In summation, under section 41 of the accord, the federal government and all the provinces would have a veto over future changes to the Constitution Act, 1982.

Summary

The courts of Canada seem to have traditionally relied on the preamble of the Constitution Act, 1867 and the Criminal Code to protect the liberties of Canadians. The courts were also reluctant to be involved in "substantive law-creating functions." For example, in the Padlock Law case, Mr. Justice Fauteux stated that only Parliament had the competence to interpret, define, defend, punish, and protect the social order and the security of the nation. After the passing of the Canadian Bill of Rights and similar provincial bills, the courts still seemed reluctant to give legal substance to these bills of rights. The Drybones (1970) case of 1970 seems to have been an exception. Mr. Justice Ritchie's statement may have established the definition of "equality before the law" and presaged section 15 (equality rights) of the Charter, which became law in 1985.

Thus, with the patriation of the constitution and the entrenchment of an amending formula, the traditional reliance on common law and criminal law is superseded by a charter that specifies the rights of individuals within the state. This is a shift of emphasis in the protection of individual rights. Courts no longer have to resort to the striking down or reading down of a provincial law regarded as violating the basic rights of Canadians.

CHAPTER 3

Student and/or Parent Rights and the Canadian Charter of Rights and Freedoms

Canadians embarked on a major shift of emphasis in the protection of civil liberties in patriating their constitution from the United Kingdom with an entrenched Canadian Charter of Rights and Freedoms (Charter). The rights of the individual and the collective rights of individuals were no longer limited by what was forbidden in law but, instead, the rights were specified in a constitutional document. Briefly stated, the Charter allowed Canadians, the elected representatives and the courts an opportunity to participate in protecting the rights of individuals. The Charter established a check and balance system with a third party, namely the courts, as referee in disputes between the individual and/or the individual as part of a group and the state. However, students, as individuals and as members of a class of individuals, play a special role within the context of society's legal expectation--or do they?

The purpose of this chapter is to review student rights and the dilemmas that such rights pose to school authorities, how the courts rationalized student rights in the pre-Charter era and the evolving reality of the post-Charter era.

Student Rights: A Dilemma

Pre-Charter literature described our dilemma when articulating student rights. Thomas Emerson (cited in MacKay, 1983:7) stated that

> with respect to the rights of children I must, for the reasons stated, be much more tentative. The extreme individualistic approach embodied in our legal system plainly raises some special problems when applied to children. Our law, as we have developed it, assumes the existence of an individual citizen who is mature, autonomous, responsible, and possessed of the capacity to make decisions. These conditions do not exist, or exist to a lesser degree, when children are involved. The law must therefore take a somewhat different approach. Indeed, the problems of children would seem to present a special challenge for our society to develop new methods of social control which go beyond traditional legal procedures but yet assure fairness and justice.

Gaffield and West (1978:11) also suggested that

> the issue is further complicated by the generally good intentions of children's caretakers (parents, teachers, training school attendants, etc.) who are given nigh-impossible tasks and then blamed for any failures. The law requires juveniles, their families, and teachers to maintain ongoing association in what is frequently a pressure-cooker intimacy. In addition to economic dependence on parents, minors require parental permission for contracts (e.g., marriage, purchases, club membership). The family and teachers are thus delegated the responsibility of controlling juvenile behaviour in ways that they may find personally disagreeable or abhorrent.. . .
>
> . . . Children are deemed to be of a fundamentally different nature than citizens (e.g., immature, dependent, ignorant, frivolous). Social and educational science has developed professorships, research programs, bodies of literature, and graduate programs around the unquestioned assumption of such social beliefs.. . . And, in our society, they often are such; but we fail to recognize the self-fulfilling vicious-circle nature of this oppression until we learn that children of other societies and times act much as adults do when they are allowed and expected to. In our society, it is illegal for a person under 16 to act maturely, i.e., as an adult.. . .

Following reasoning similar to that of Thomas Emerson and Gaffield and West, Romula Magsino suggested that the concept of developmental rights be the approach educators and school systems ought to use. According to Magsino (cited in MacKay, 1983:7), students are not ready to exercise independently those same rights as adults. Students, according to this reasoning, should be granted, at the discretion of the educators, their rights in accordance with their individual capacities.

With the enactment of the Charter, the courts have been asked to define or to decide whether or not a student is a "person" as used in the Charter. Some early post-Charter unreported cases seemed to indicate that the courts are not defining "who is a person for constitutional purposes" (MacKay, 1983) in the same manner. For example, in one case, MacKay (1983) reported that the term "person" was defined to include people under 16 and, in another case, "a juvenile is not a person for purposes of the Charter." In R. v. James Michael G. (1986), the court stated that a special relationship exists between the student and the principal. The rights of the student and the obligations of the school were summarized by Judge Grange of the Ontario Court of Appeal as follows:

> . . . the relationship between principal and student . . . is not remotely like that of [an officer] and citizen. First, the principal has a substantial interest not only in the welfare of the other students but in the accused student as well. Second, society as a whole has an interest in the maintenance of a proper educational environment, which clearly involves being able to enforce school discipline efficiently and effectively. It is often neither feasible nor desirable that the principal require prior authorization before searching his or her student and seizing contraband.

Using a different approach to protecting student rights, in R. v. H. (1986), Mr. Justice Dechene of the Court of Queen's Bench confirmed that, when students are questioned, the conditions stipulated in section 56 of the Young Offenders Act had not been met. Section 56 of the Young Offenders Act deals with the (cited in School Law Commentary, Case file 1-1-1)

> admissibility of evidence in legal proceedings and states that no statement given by a young person to a peace officer or 'other person who is in law a person in authority' is admissible against the young person unless certain rights are given to that young person. Principals and teachers were found to be persons in authority in relation to students in their charge.

As a consequence, there was no evidence regarding the theft, so there was no conviction. He also stated (as an obiter dictum) that

> if it were necessary for him to decide the application of the Charter, he would find that the Charter does not apply to principals and teachers on the facts of this case.

In this case, the courts demonstrated that it is not always necessary to use the Charter to protect the legal rights of students when an act defining the special role of students already exists that adheres to the principles enunciated in the Charter. However, the court noted that different conclusions could occur when the crime is "obvious or heinous [and] that police participation is inevitable.. . ."

Student Rights: Pre-Charter Era

Before the enactment of the Charter, precedents relative to schooling and student rights had already been established. For example, in the Perreault v. Kininisto School Unit 55 (1957), which dealt with the right to attend school, Justice Davis of the Saskatchewan Queen's Bench stated that

> the law recognizes that every child is entitled to an education and imposes a penalty on the parent or guardian who willfully neglects to send the child to school when required to. The larger school units were designed, as I understand them, to ensure an education to all children within the district apart entirely from the financial standing of the ~~parent or ho~~wever remote the child might be from a school.

Cruickshank (1982) stated that Canadian statutes had not established the student's right to receive an education. In most provinces, the student has a duty to attend school. That duty to attend can be enforced in a court of law. This contention can best be illustrated by reviewing some precedents established by the courts. As to the kind of education, Mr. Justice O'Byrne of the Alberta Supreme Court (Trial Division) stated in Carrière v. County of Lamont (1978) that

> I do not have the authority to direct the Board to what must be done or the manner in which this Order is to be complied with. That is a matter for the Board to decide.

In other words, according to Anderson (c. 1984:18), Mr. "Justice O'Byrne stated that although the child had the right to attend school, the court had no authority with respect to the specifics of the schooling."

In another example dealing with compulsory education, the British Columbia Court of Appeal upheld the attendance law of that province. The Doukhobor parents argued that the attendance laws of the province violated their freedom of religion rights. Mr. Justice Smith, in Perepolkin v. Superintendent of Child Welfare (1957), stated that

> the B.N.A. Act, section 93, expressly gives exclusive jurisdiction over education to the Provinces with a few enumerated exceptions, none of which applies here. Even assuming that the Provinces cannot legislate on religion section 93 I think makes it clear that

> the mere fact that bona fide legislation on education may indirectly affect religion in some aspects does not affect its validity. Any other view would make the enumerated exceptions nonsensical . . . I, for my part, cannot feel that in this case there is any religious element involved in the true legal sense. It seems to me that religion is one thing; a code of ethics, another; a code of manners, another. To seek the exact dividing line between them is perhaps perilous but I absolutely reject the contention that any group of tenets that some sect decides to proclaim form part of its religion thereby necessarily takes on a religious colour.

The courts have also determined in the Chabot v. Les Commissaires d'écoles de Lamorandière (1957) (previously discussed) that

> the parents had the right to have their children excluded from the religious instruction and the school had no right to exclude the children from school.. . . He [Justice Casey] commented that the freedom of religion is a basic liberty but that it is not unrestricted.

As to the compulsory aspect of patriotic exercises, the courts responded quite differently in two provinces. In Ontario, the Ontario Court of Appeal, in Donald et al. v. The Board of Hamilton for the City of Hamilton et al. (1945), (cited in Anderson c. 1984:42) decided that

> pupils had the right to refrain from compulsory patriotic exercises, and could not be expelled for refusal to participate.. . . The Alberta Supreme Court, [in Ruman v. Board of Trustees of Lethbridge School District, 1943] two years earlier, reached an opposite conclusion on the same issue based on the Alberta school legislation in force at that time.

In cases dealing with personal appearance, the courts have upheld the legality of dress regulations. In Alberta, Chief Justice Milvain of the Supreme Court upheld the school board's right to establish dress regulations and the right to suspend pupils for not following these regulations. Specifically, in Choukalos v. St. Albert Protestant Separate School District No. 6 (1962), Mr. Justice Milvain stated that

> at the time these particular regulations were passed by the Board,

> they did so because there was in society, a feeling that the blue jeans and the T-shirt were the uniform of the hoodlum. That, of course, does not mean that each person who wears them is necessarily a hoodlum, but where a group, a large group of young children are brought together for the purpose of being educated in a school, I cannot say that any School Board is acting unreasonably should [the board] decide that any of the unpleasant elements or those indicia of unacceptable elements are kept away from children in their case. It strikes me as being reasonable that they do so, and I am satisfied on the basis of the law, which is set out in many cases, and reference to one of them is sufficient, and that is the Kruse and Johnson case, the citation of which is 1898 2 Queen's Bench Division at page 91, that where it appears that a public authority has been acting reasonably without what might be generally termed in the law of bias, and bias is a wide term in the law, that they have acted bona fide, that a court is not going to interfere with their conclusions even though they may feel, the particular court may feel that the public authority exercised its discretion in a slightly different way to what the individual court might have done.
>
> Before the Court will interfere, there must be such unreasonableness that it goes to the root of the jurisdiction and destroys it. That cannot be said in this case.

In cases about search and seizure and the concept of reasonableness, the courts may have presaged the Charter. For example, in Diane Dow v. Renfrew et al. (1979), a young secondary student had to undergo a body search. The police believed that some students were trafficking in drugs and had a dog "sniff out" the marijuana. The court, using the principles of reasonableness that is established in common law, declared that four factors had to be present for the police and school officials to have acted in a reasonable manner. The four factors were the student's age, the student's history and record in school, the seriousness and prevalence of the problem, and the exigency requiring an immediate search. In the Dow case, the court found that the police acted reasonably in searching the students and lockers, but acted unreasonably in forcing the strip search. This case occurred in 1979, but the court reasoning seemed to foreshadow the manner for dealing with such an issue under the Charter.

Canadian common law, that has in part been incorporated into Canadian criminal law, has also guided the courts and school authorities in determining what is cruel and unusual punishment. For example, section 43 of the Criminal Code states as follows:

> Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his [her] care, if the force does not exceed what is reasonable under the circumstances.

In R. v. M.E.K. (1981), Judge Geatros of the Saskatchewan District Court was asked to rule on a case that dealt with the use of force by a teacher for correction of a pupil. The accused was a teacher who disciplined a student by banging his head against a door and pulling his hair. The judge ruled that "the degree of force used by the accused was unreasonable and therefore section 43 was inapplicable." However, the accused was granted an absolute discharge because of the "honest belief that force was required did remove much of the culpability. . . ." It appears that the honest belief of the teacher that force was needed and not the unreasonableness of the degree of force was the reasoning for the accused being found not guilty.

The extent to which student rights are protected under the Charter may now be determined more on the basis of the reasonableness principle as enunciated by the Supreme Court of Canada in the Oakes (1986) case.

The Charter Era

Background on the Charter

The Charter is set out in sections 1 to 34 of the Constitution Act, 1982. Another important section of the Act is section 52(1), which deals with the constitutional supremacy of the Constitution Act, 1982. This section reads as follows:

> The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

The Constitution Act, 1982, in which Part One is the Charter, is, therefore, supreme throughout Canada. The Canadian Bill of Rights received "timid interpretation of its provisions, and the fact that the Charter is a part of the Constitution should give it added strength" (Black, 1985:3). Such would also hold for the corresponding provincial bills.

According to Black (1985:3), Chief Justice Dickson also emphasized the supremacy of a constitutional provision. He stated that

> the task of expounding a constitution is different from that of interpreting a statute because a constitution must provide an ongoing framework to regulate the exercise of governmental power. . . . Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. To meet this goal, it must be interpreted not in a narrow technical way but from a broad perspective that reflects the underlying purpose of the Constitution.

Paraphrasing from Judge Stevenson (1983:1) of the

Provincial Court of Alberta, the Charter:

1) establishes a new tenor.

> "The whole tenor is provocative--it shifts the focus of Canadian lifestyle to the rights of the individual and individual classes within that lifestyle--as opposed to the previous social attitudes of doing what was right for the majority."

2) supersedes and takes precedence over all other legislation--federal, provincial or municipal. Judge Stevenson does not mention in the article the "notwithstanding" clause that partially negates the entrenchment rights of the individuals.

3) applies to all Canadians regardless of age. He also states that students, for example, are a class of individuals.

4) is limited only by the phrase "demonstrably justified in a free and democratic society" regarding the rights of Canadians. Judge Stevenson later notes that this limitation places the burden on the state to prove that it needs limitations.

5) spells out in general and/or specific terms the rights of Canadians.

6) gives the courts sole right to determine infringement or denial of those rights that are spelled out in the Charter. As Judge Stevenson states, it allows the Courts of Canada to do "social engineering" or interfering in what was solely a political matter before the Charter.

7) entails a massive shift in the judicial approach to issues that come to the courts. He notes that this is especially true in the area of civil liberties.

8) entails a similar, equally massive shift in some approaches in the field of education. Specifically, Judge Stevenson

suggests that "the precepts by which school officials deal with students' rights are at first glance questionable and, upon closer examination, at least in some areas clearly and fundamentally wrong."

Accordingly, one of Judge Stevenson's (1983:2) assertions that the Charter "has entailed a massive shift in judicial approach to issues that come before the Courts" suggests that educators should develop an awareness of the Charter's implications for education.

In more specific terms, the Charter enshrines the following:

1) Limitation Rights (section 1)
2) Fundamental Rights (section 2)
3) Democratic Rights (sections 3 to 5)
4) Mobility Rights (section 6)
5) Legal Rights (sections 7 to 14)
6) Equality Rights (section 15)
7) Linguistic Rights (sections 16 to 22)
8) Minority Language Educational Rights (section 23)
9) Enforcement (section 24)
10) Adjectival Rights (sections 25 to 31)
    a. section 25--Aboriginal Rights
    b. section 27--Multicultural Heritage
    c. section 28--Rights and freedoms are guaranteed equally to male and female
    d. section 29--Denominational Rights
11) Application to whom (sections 32 and 33)

The Student and Sections 1 and 2

Part One of the Charter begins with the following statement:

> Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

and followed by section 1 dealing with "Guarantee of Rights and Freedoms" and "Fundamental Freedoms."

Guarantee of Rights and Freedoms. Section 1 is "one of the Charter's most important sections" (Black, 1985:32). Under section 1, the Charter guarantees the rights and freedoms "set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

Black (1985) suggested two possible approaches by which the courts may interpret section 1 and other parts of the Charter. In the one-stage approach, Black (1985:32) stated that that courts may assume

> that section 1 is a part of every section creating a right or is a guide to be used in evaluating the limits inherent in the various rights. In other words, one takes section 1 into account while applying the section creating the right.

However, according to Black (1985), there may a weakness in arguing for this approach because the organization of the sections seems to be independent. The Supreme Court of Canada in R. v. Oakes (1986), appears to have agreed that a two-stage approach was preferable.

In the two-stage approach, Black (1985:33) suggested that the courts may wish to be involved in

> first determining whether, apart from section 1, a course of conduct

> infringes on a right and, if it does, to move on to a second stage, at which section 1 is used to determine whether the infringement is justified in the circumstances.

The overlapping that seems to occur may contain explicit limitations. For example, in section 8 there is an explicit limitation within the section; namely, the word "unreasonable." "It would seem that the rights and freedoms are defined at the first stage before considering section one limits" (Black, 1985:33).

Furthermore, Black (1985:34) stated that

> the experience to date tends to refute the allegations that the section will nullify rights more or less completely. Indeed, section 1 may impose certain requirements that would not have been imposed without it.

Mr. Justice McDonald (1985) succintly summarized the role of section 1 in relation to other sections of the Charter. For example, in dealing with section 15, he stated that if recent dicta were correct, then

> any qualification of its scope must then be founded upon the strictures of section 1: a limitation in either of the rights guaranteed by section 15 must be "prescribed by law" and it must be "reasonable" and such as can be "demonstrably justified" in a "free and democratic society."

In 1986, the Supreme Court of Canada confirmed the two-step approach to be preferable. In R. v. Oakes (1986), the Supreme Court stated that

> section 1 has two functions: it guarantees the rights and freedoms set out in the provisions which follow it; and it states explicitly the exclusive justificatory criteria (outside of section 33) against which limitations on these rights and freedoms may be measured. The onus of proving that a limitation on any Charter right is reasonable and demonstrably justified in a free and democratic society rests upon the party seeking to uphold the limitation.

The Supreme Court further ruled that two criteria must be followed. First, the measures must be "sufficiently important to warrant overriding a constitutionally protected right or freedom." Second, the court stated that the "party invoking section 1 must show the means to be reasonable and demonstrably justified." Specifically, according to the court, a form of "proportionality test" must be used: namely, that a) the means must be fair and not arbitrary; b) the means should "impair the right in question as little as possible" and c) there must be a "proportionality between the effects of the limiting measure and the objective--the more severe the deleterious effects of a measure, the more important the objective must be."

In Zylberberg et al. v. Director of Education of the Sudbury Board of Education et al. (1986), according to Mr. Justice O'Leary of the Ontario Divisional Court, the section 1 "reasonable limits provision" saved the regulations permitting religious exercises. The reasonable limits provision was also noted in R. v. Big M Drug Mart Ltd. (1985), in which the Supreme Court of Canada ruled that

> section 1, however, will entail an analysis and evaluation of the purpose underlying the impugned legislation if the government seeks to justify a limitation on the citizen's right under that ~~section~~. The government policy objective must then be assessed and a determination made as to whether this interest is sufficiently important to override a Charter right and whether the means chosen to achieve that objective were reasonable.

Fundamental Freedoms. Section 2 guarantees freedom of conscience and religion, of thought, belief, opinion, and expression, of peaceful assembly and of association. Black (1985:6) stated that it

> will sometimes be necessary to take account the conflicting values

> served by two or more rights and to strike some balance between them so that one is not achieved at undue expense to another. It is appropriate to criticize the particular limitations included in the Charter or the ways in which the required balancing process is to be carried out, but some manner of limiting rights was inevitable.

Pastor Jones had argued that the compulsory attendance provisions of the School Act offended his freedom of conscience and religion guaranteed to him by section 2(a) of the Charter. In a precedent-setting ruling, Mr. Justice LaForest of the Supreme Court of Canada, in speaking for the majority, in R. v. Jones (1986), stated that this interference or infringement was reasonable.

As to freedom of conscience and religion, in R. v. Big M Drug Mart Ltd. (1985), the Supreme Court of Canada ruled that

> what may appear good and true to a majoritarian religious group, or to the state acting at its behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The Charter safeguards religious minorities from the threat of 'the tyranny of the majority.'

As to freedom of expression, the British Columbia Court of Appeal has held that prohibiting public criticism of one teacher by another does not violate that guarantee. In Cromer v. British Columbia Teachers' Federation (1986), Mr. Justice Lambert, speaking for the three member court, stated that

> the Code of Ethics is designed to avoid disharmony among teaching colleagues, and to promote professional standards, all in the interest of creating an environment where the children being taught will receive the best educational opportunity possible. As both the trial judge and the judicial committee noted, clause 5 of the Code of Ethics does not preclude criticism by one teacher of another; it sets out a procedure for making criticism that is intended to increase the beneficial effects of the criticism and minimize the harmful effects. On the other side of the balance lies the importance of

Mrs. Cromer's being able to speak her mind.

In these cases, adult problems that may affect students were reported. The Supreme Court of Canada upheld compulsory attendance legislation, further explaining that freedom of conscience and religion had to be protected against the "tyranny of the majority." In the third example, the British Columbia Court of Appeal stated that, for the purpose of avoiding disharmony among teaching colleagues and promoting professional standards, the teaching profession could enforce a code of ethics, thereby limiting freedom of expression that was critical "all in the interest of creating an environment where the children being taught will receive the best educational opportunity."

The Student and Section 7

The principle of fundamental justice may allow students and parents to challenge school rules and/or provincial statutes. The term itself begs definition. For example, even before the enactment of the Constitution Act, 1982, Mr. Justice Fauteux in R. v. Duke (1972) defined, with the agreement of a nine-judge court, the term fundamental justice as follows:

> Without attempting to formulate any final definition of those words, I would take them to mean, generally, that the tribunal that adjudicates upon his rights must act fairly, in good faith, without bias and in a judicial temper, and must give to him the opportunity adequately to state his case.

Anderson (c. 1984:11), citing from the Special Joint Committee hearings, quoted the explanation of Dr. Strayer--

the then Assistant Deputy Minister, Public Law, Department of Justice--as to his department's understanding of the phrase "fundamental justice." Dr. Strayer stated as follows:

> Mr. Chairman, it was our belief that the words 'fundamental justice' would cover the same thing as what is called procedural due process, that is the meaning of due process in relation to requiring fair procedure. However, it in our view does not cover the concept of what is called substantive due process, which would impose substantive requirements as to the policy of the law in question.. . . [In the United States] the term due process has been given the broader concept of meaning both the procedure and substance. Natural justice or fundamental justice, in our view, does not go beyond the procedural requirements of fairness.

Mr. Justice McDonald (1982:23) questioned whether or not natural justice was the same as fundamental justice. Mr. Justice McDonald asked:

> Are 'the principles of fundamental justice' to be equated with the principles of 'natural justice' as they are, particularly, applied in administrative law, both as principles of common law and, in the federal jurisdiction, under section 28 of the Federal Court Act? Those principles of 'natural justice' are that a person is entitled to a fair hearing--with all that that implies in terms of notice, a right to present one's case and meet the opposite case, perhaps a right of cross-examination, perhaps a right to be represented by counsel, perhaps a right to receive a reasoned decision, and so on--and that the person making the decision be free of bias and not be the subject of a reasonable apprehension of bias. No doubt the 'principles of fundamental justice' include the principles of 'natural justice', but it cannot be predicted whether the courts will consider that they are co-extensive. Needless to say, if sections 8 to 14 are considered as specifics of the right guaranteed by section 7, it will follow that 'the principles of fundamental justice' will be broader in their scope than the principles of 'natural justice.'

Anderson (c. 1984:57) suggested that the possible role of section 7 be in the following manner:

> Although the right of courts to review the substantive content of legislation that affects the liberty of the person, is, at best, questionable, it is clear that section 7 guarantees that 'liberty' rights will not be taken away 'except in accordance with the principles of fundamental justice.' This does not guarantee the continued existence of the rights, but it does guarantee that the person whose rights are being adversely affected, will be afforded certain procedural rights.

The issue that will challenge school authorities in the post-Charter era is reflected in the latter part of Anderson's statement, namely that "it does guarantee that the person whose rights are being adversely affected will be afforded certain procedural rights." If McDonald's assertion that section 8 should be "considered as specifics of the right guaranteed by section 7, it will follow that 'the principles of fundamental justice' will be broader in their scope than the principles of natural justice." Accordingly, "he [McDonald] implies that fundamental justice may be broader in scope than natural justice because of its tie-in with the other legal rights of the Charter" (Anderson, c. 1984:58). Therefore, unreasonable search and seizure, as enunciated in section 8, may have such a "tie-in."

The Jones case (R. v. Jones, 1986), previously mentioned, exemplifies an individual's arguing that his or her rights to fundamental justice were being removed by section 143(1)((a) of the Alberta School Act.

Pastor Jones was charged for contravening the truancy section of the School Act because he opened a private school in the basement of his church. Judge Fitch acquitted Pastor Jones, reasoning that fundamental justice was not perceived to have occurred because section 143(1)(a) limited evidence of efficient instruction. Judge Fitch also declared invalid Pastor Jones' contention that he had the right to educate his children without interference from the state, which he claimed contravened his freedom of religion rights that are guaranteed in the Charter. The judge ruled that Pastor Jones' argument about freedom of religion was invalid because Pastor Jones, according to the Department of Education Act, was required only to register his private school as a Category 4 school. Category 4 schools do not receive any funding. Certificated teachers are not required, but the curriculum must receive the Minister's approval.

Leave to appeal to the Supreme Court of Canada was granted. The Court was asked the following constitutional question:

> Whether Sections 142, 143 and 180 of the School Act, R.S.A., 1980, c. 3 are inconsistent with Section 2(a) or Section 7 of the Canadian Charter of Rights and Freedoms and therefore of no force or effect to the extent of the inconsistencies pursuant to Section 52(1) of the Constitution Act, 1982?

According to Justice La Forest of the Supreme Court of Canada, the facts are as follows:

> The accused was originally tried and acquitted by Fitch P.C.J. on March 21, 1983, but on an appeal to the Court of Appeal of Alberta, that court, on October 3, 1983, referred the matter back to the trial judge for further argument following notice to the Attorneys General of Alberta and Canada pursuant to the Judicare Act of that province. Fitch P.C.J. then heard the matter in accordance with this direction and again acquitted the accused on all charges.

The Supreme Court ruled that section 2(a) of the Charter did not

> offend the freedom of conscience and religion guaranteed the individual nor that the limiting evidence of efficient instruction to a certificate . . . deprives him of his liberty contrary . . . to section 7

because sections 142, 143 and 180 of the School Act "are not inconsistent with section 2(a) or 7 of the Charter.

Pastor Jones had challenged the decisions of school authorities as well as the legislation that they were upholding. He believed the legislation violated the principles of fundamental justice that he was entitled to under section 7 of the Charter. Madam Justice Wilson dissented with the majority of the Supreme Court and agreed that section 7 had been violated.

In a Newfoundland truancy case, section 7 of the Charter was also challenged. In R. v. Christine McCloud and Gloria Elaine Randell (1987), the parents were charged with failing to enroll their children to school. In the Supreme Court of Newfoundland, Justice Inder, speaking for the Court, stated that

> the legislation was constitutional in that it did not contravene sections 7, 2(a), 11(d) and even if it did, it was a reasonable limit demonstrably justified in a free and democratic society . . . especially when one considers the fact that the said section 6(2) had to do with enrollment and not 'attendance.'

Student rights and the applicability of the Charter were confirmed in R. v. H (1986). Judge Russell of the Youth Court stated that students are protected by the Young Offenders Act when being questioned by an authority such as a principal. She further ruled that the Charter applies to such bodies as school boards (School Law Commentary, file 1-1-1)

> exercising a delegated legislative authority. As teachers and principals are employees of school boards, she found their actions to be governed by the provisions of the Charter.

On appeal, the Alberta Court of Queen's Bench Justice Dechene confirmed that there was a breach of the Young Offenders Act, but concluded that it was not necessary to decide if the Charter applied to schools.

The Student and Section 8

Gee and Sperry (1978) (cited in Anderson, c. 1984:69) described the four major categories of searches that American school officials have conducted. They are as follows:

> 1. The search is part of a general inspection . . . to maintain standards of cleanliness, sanitation, or neatness. The search does not, in advance, single out a particular student in any way and there is no sanction (or possibly only a very minor sanction) for failing to meet the prescribed standard.
> 2. The search is designed to locate evidence of an infraction of school regulations for which a serious sanction such as expulsion might be imposed. The school official making the search is not attempting to enforce the laws of society at large. But the search is focused on a particular student, and it may produce severe consequences for that student.
> 3. This situation is the same as the preceding one except that the school regulation that the student is suspected of violating is, in substance, also a criminal violation. This would be true when the regulation by its own terms prohibits students from "violating the law" (or a particular law) or when substantially the same conduct proscribed by the regulation is also conduct prohibited by the criminal law.
> 4. The 'administrative' search is undertaken not to enforce a school or college rule, but for the express purpose of obtaining evidence that a student has committed a criminal offence.

Anderson elaborated on the questions facing the courts in dealing with searches. Quoting from Kemerer, Frank R. (1979), Anderson (c. 1984:69) stated that

> the problem facing the courts is not whether students at public institutions have rights or privacy per se but rather deciding at what point and in what situations students are entitled to expect freedom from governmental intrusion. Is a student entitled to Fourth Amendment protections when school officials conduct searches on school premises? If only interval school disciplinary sanctions are involved, do Fourth Amendment protections apply? Does the nature of the search make a difference, i.e., student lockers, student dormitory rooms, student possessions, the students themselves? Can evidence secured by school officials without a warrant be legally introduced into an off-campus judicial proceeding?
>
> These are difficult questions, and the courts have not always

answered them in similar ways.

In R. v. James Michael G. (1986), the Ontario Court of Appeal was asked to rule on the search powers of principals. In this case, a 14-year-old grade seven student had been seen placing drugs in his socks. The student was asked to come to the principal's office. In the presence of the vice-principal, the student was asked to remove the shoes and socks. The principal took some marijuana from the student's sock or pantleg. Consequently, the police were called, and they arrested and informed the student of the Charter rights.

The Court of Appeal concluded that "the search of the accused in the case at bar was not only justified at its inception but indeed dictated by the circumstances." The court added that the search was reasonably related to the desirable objective of maintaining proper order and discipline and was not

> excessively intrusive.. . . [A] principal has a discretion in many minor offences whether to deal with the matter himself, whether to consult a child's parents, and whether to call in the law-enforcement authorities.

The Court of Appeal was also asked whether the Charter applied to the actions of the principal. The Court found it

> that the school board directing the affairs of the school and the school itself, including the principal and other teachers, are subject to the Charter in their actions and dealings with the students under their care.

The Court of Appeal, however, noted that, in circumstances in which a crime was obvious or heinous and the participation of the police was inevitable, the search by a school principal could be disputed. The Court also stated that in cases in which the principal was acting as an agent of the police in attempting to detect a crime instead of acting as a principal in attempting to maintain discipline in the school, the actions of the principal could also be disputed.

Presumably, the legality of school locker searches and seizure will be similarly determined. Schools, however, seem to operate on the basis that the lockers are given temporarily to the students and are, therefore, school property. This argument, if taken to the absurd, could destroy all rights to be secure from search (MacKay, 1983). Accordingly, schools will have to justify the reasonableness of searches. The courts (MacKay, 1983:32) "will have to decide whose viewpoint will be paramount."

The Student and Section 12

Under section 12, "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment." Anderson (c. 1984:79), quoting from Morel, makes the following statement in reference to the words "cruel and unusual":

> The main point to note is the use of the conjunction "and" between cruel and unusual. Both elements are required before treatment or punishment is deemed to be in contravention of the Charter.. . . Morel describes the following points as relevant in the application of section 12:
>
> 1. the severity of the punishment in relation to the seriousness of the offence;
> 2. the arbitrariness in the punishment, including the imposition of the punishment.

What is cruel and unusual under section 12 will force schools to look at the whole process of punishment and procedures to be followed that lead to handing out of a punishment to a student or students. Basing herself on Morel, Anderson (c. 1984:80) suggested that

> the propositions advanced by Morel have the effect of requiring a determination under section 12 based on all the circumstances surrounding the punishment and not solely on the punishment itself. In other words, one type of punishment could be considered to be cruel and unusual in relation to one set of circumstances but not in relation to another set of circumstances. There are, thus, four possibilities to consider when assessing if a punishment is cruel and unusual:
>
> 1. whether the punishment in itself is cruel and unusual;
> 2. whether the circumstances or conditions under which the punishment has been levied are cruel and unusual;
> 3. whether the punishment is so excessive in relation to the seriousness of the offence as to render it cruel and unusual; and
> 4. whether the arbitrariness in the punishment and its imposition renders the punishment "cruel and unusual."

The Supreme Court of Ontario, for example, ruled in Shoniker v. Ministry of Education, Attorney-General of Ontario, et al. (1986) that a student may be suspended by the principal and that that authority of the principal may be delegated to an athletic association. In turn, the association has the authority to suspend a pupil from school activities.

In another case dealing with suspension, the Ontario Supreme Court ruled, in The Peel Board of Education v. W.B. by his Litigation Guardian, and W.S. by his Litigation Guardian (19887), that a student suspension or expulsion cannot proceed until criminal charges had been adjudicated.

In this case, the principal, upon hearing of the charges, immediately suspended the students and recommended that they be expelled by the board because their presence was injurious to the moral tone and mental well-being of the school. The board concurred and began expulsion proceedings.

The Court ruled that the actions of the principal and board violated section 38 of the Young Offenders Act in that

> the principal seems to have assumed that the students were guilty simply because they were charged. That is wholly contrary to the fundamental principle of our system of justice. Everyone is presumed to be innocent until found guilty by due process of law. Had the principal not jumped to the conclusion that the students were guilty, he would have had no basis for ordering their suspension. He had no other information on which to base his conclusion that their conduct was injurious to the moral tone of the school. He had, therefore, no basis for suspending them under section 22(1) of the Act.. . .
> The principal was not alone in this fundamental misconception of our system of justice. The board heard the appeals launched on behalf of the students and confirmed the suspensions. It then went on to impose a further suspension. In doing so, the board must have assumed that the students were guilty as charged, for they had no information other than the fact of the charges on which to rest both their denial of the appeals and the further suspensions that they imposed.

The Student and Section 15

On April 17, 1985, section 15 of the Charter came into effect. Before and since 1985, much of the literature available has speculated on the effects of section 15. For example, the inclusion of age in section 15 of the Charter, according to MacKay (1983:33), "may embody the most important and far-reaching welfare right of all." Cruickshank (1982) (also cited in Anderson, c.1984:92), in turn, stated that section 15 "ought to strike out section 43 of the Criminal Code." Other authors have also speculated on the impact of section 15 after April 17, 1985. Section 15 reads as follows:

> 1. Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.
> 2. Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Section 15(1) declares that every individual is equal before and under the law. This right is extended to all individuals and not only Canadian citizens as per section 23. According to Professor Beckton (1987:13):

> section 15 is one of the most significant sections in the Charter because it guarantees equality for all Canadians. It provides a mechanism for obtaining redress when governmental action has the effect of resulting in a denial of equality.. . . The guarantees in section 15 are much broader than those contained in the Canadian Bill of Rights. While American and previous Canadian case law may be useful, it cannot be definitive of the guarantees in section 15.. . .
> Section 15(2) has the potential to be a very significant section in the context of our multicultural heritage. It permits programs that are designed to ameliorate the conditions of disadvantaged groups.. . . Second, section 15(2) may be able to ~~be used to~~ give employment preferences to minorities, aboriginals and women.

In other words, section 15(2) gives constitutional recognition to "affirmative action." It provides that "subsection 1 does not invalidate any law, program or activity that has, as its object, the amelioration of conditions of disadvantaged individuals or groups" (Black, 1985:26). Canadian legislators are, therefore, able to establish programs to help the disadvantaged groups in our society.

Mr. Justice D.C. McDonald (1985:3), in dealing with section 15, suggested the following:

> So far, the predominant, but not exclusive, academic and judicial view is that the Charter is directed against government abuse of

> the individual and not against conduct by private individuals toward other persons.. . .
>
> The predominant opinion is that the notion of "government" includes legislative enactments, common law rule and delegated legislation.

Citing Wegner (1978) and Griggs (1984), Mr. Justice McDonald (1985:13-15) also asked:

> What if a school system fails to remove physical barriers that prevent mobility-impaired students from using shuttle bus service?
>
> What if a school system provides both regular school year programming and optional summer school programming for non-handicapped children, but only regular school year programming for severely handicapped children?
>
> A school system expels several mentally retarded high school students for misconduct. If the disciplinary action is related to the children's handicaps, is section 15 violated?
>
> Does section 15 require public school systems to provide individual handicapped children with an appropriate education and to make available a full range of alternative educational placements in an appropriate educational setting?
>
> Does a school system violate section 15 when it does not provide a special program for learning-disabled children and children, therefore, have to participate in the regular education program, from which they receive minimal benefit?
>
> Do provincial statutes violate section 15 by making compulsory the attendance of children at a public school or a private institution that is officially approved?
>
> Does a school system violate section 15 when it excludes mentally handicapped children from the regular classroom? Does violation occur only if the system fails to provide an alternative program for such children? If such a program is provided, what standard must it attain?

Judge Zuker (1985:2-3), at the National Symposium on Equality Rights, asked the following questions relative to education:

> Is mainstreaming the providing of a basic floor of opportunity consistent with equal protection?
>
> Does appropriate education include special education and related services? What is a least restrictive environment?
>
> Can a school prohibit boys who like cooking from taking a home economics course while requiring a female student to complete the same course for graduation? What is the greater relevancy, individual capabilities or presumed sexual characteristics?

> Is not discrimination in education one of the most damaging injustices that women suffer? Does not the denial of equal education result in the denial of equal employment opportunity?

Even though these suggested issues need legal advice and judicial clarification, Judge Black (1985:2) stated that

> the Charter attempts to answer fundamental questions about the way our political and legal system should operate. It deals with complex and controversial social and moral issues, and we would be fooling ourselves to think that resolving these issues will not strain our intellectual resources to the limit.
>
> It would be a grave mistake, however, to use these challenges as an excuse to leave the matter to "experts" in the legal profession. The Charter is new and the legal profession does not yet have the great experience with it. We are all at or near the starting line together.. . .

Professor Beckton (1987:6) stated that

> it seems from this wording that section 15 was intended to encompass all forms of discrimination whether appearing on the face of the legislation, in its administration or in its impact.. . . It can be argued that equal protection and equal benefit were added to ensure that disparate impact or systemic discrimination would be encompassed under section 15 and that benefits would also be subject to equality principles.

For example, in R. v. Big M Drug Mart (1985), the Supreme Court of Canada emphasized relative to section 2 and freedom of religion that

> the equality necessary to support religious freedom does not require identical treatment for all religion. In fact, the interests of true equality may well require differentiation in treatment.

In another case, the Supreme Court of Canada ruled that intent to discriminate on the part of an employer need not be proved if the effect were discriminatory. Specifically, in the O'Malley case, Ontario Human Rights Commission and Theresa O'Malley v. Simpson-Sears Limited (1986), the Supreme Court stated that adverse effect discrimination

> arises where an employer, for genuine business reasons, adopts a rule or standard which is, on its face neutral, and which will apply

> equally to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristics of the employee or group, obligations, penalties, or restrictive conditions not imposed on other members of the work force.. . . An employment rule honestly made for sound economic or business reasons, equally applicable to all to whom it is intended to apply, may yet be discriminatory if it affects a person or group of persons differently from others to whom it may apply.. . . The employer must take reasonable steps towards that end which may or may not result in full accommodation. Where such reasonable steps, however, do not fully reach the desired end, the complainant, in the absence of some accommodating steps on his [her] own part such as an acceptance in this case of part-time work, must either sacrifice his [her] religious principles or his [her] employment.

In K.S. Bhinder and the Canadian Human Rights Commission v. The Canadian National Railway Company (1985), the Supreme Court of Canada ruled that where a "bona fide occupational requirement exists, no discriminatory practice has occurred." In this case, the Supreme Court sent the case back to the tribunal to resolve the bona fide occupational requirement within the scope of the court's reasoning.

In summation, section 15 has been in effect only since April of 1985. Few judicial decisions are available. "The central issue in interpreting section 15 is to determine what we mean by the concept of equality" (Black, 1985:19). To date, the Supreme Court of Canada has begun to rule on the equality section of the Charter by explaining the meaning of discrimination such as in the O'Malley (1986) case. In the Bhinder (1985) case, the court then restricted the effects of the previous ruling by asserting that the bona fide occupational requirements shifted the focus away from the individual to the job.

The Student and/or Parent and Sections 23 and 27

Under the Charter, English and French are given constitutional entrenchment "in all institutions of Parliament and government of Canada." More specifically, section 23 of the Charter defines the minority language educational rights of citizens of Canada whose first language is English or French. However, Canada also has other ethnic groups. Section 27 affirms the rights of these minorities to preserve and enhance their cultural heritage. Existing native rights are affirmed in Part 2 of the Constitution Act, 1982.

Section 23 is addressed to Canadian citizens, giving them the right to have their children educated in the French or English minority language and in their own facilities when certain conditions are satisfied. Section 23 of the Charter reads as follows:

> Minority Language Educational Rights
>
> 23(1) Citizens of Canada
>
> (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
>
> (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they receive that instruction is the language of the English or French linguistic minority population of the province have the right to have their children receive primary and secondary school instruction in that language in that province.
>
> (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.
>
> (3) The right of citizens of Canada under subsection (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

> (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
>
> (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Section 27 affirms "the multicultural heritage of Canadians." It states as follows:

> This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

Presently, various sections of the School Act address the question of language and instruction. According to The Council of Ministers of Education, Canada (1983) report, Alberta's present act (School Act) allows for instruction in French or other languages. The pertinent sections of the School Act and/or regulations are summarized as follows: Section 11 allows the Minister to make regulations governing the use of English, French or any other language as a language of instruction <see regulation 490/82>.

The regulation states that:

a. Boards shall not commence a program that uses French unless it passes and delivers a resolution to the Minister authorizing it as the language of instruction.

b. Provision must be made for English instruction on the request of students who would normally attend that school.

c. School boards have discretion to use French as a language of instruction during the entire school day in grades 1 and 2.

d. Grades 3 to 6 must have 300 minutes of English language arts per week.

e. For grades 7 to 9, it must be taught for a minimum of 150 hours per year.

f. For grades 10 to 12, not fewer than 125 hours or the equivalent of a five-credit course in English language arts must be taught.

Section 27 gives the local advisory board powers to request the board in a division to institute instruction in the French language.

Section 159 gives the board the power to authorize that:

a. French be used as a language of instruction

b. any other language be used as a language of instruction in addition to the English language in all or any of its schools

c. boards authorizing the above must comply with regulations of the Minister

d. boards may employ one competent person or more to give instruction in French or any other language

e. the course of instruction cannot supersede instruction required by the regulations of the Minister and the Alberta School Act.

In summation, Alberta is one of several provinces which recognizes that Canada not only has two official language groups but many multicultural groups as well. Through legislation, the province allows for the language groups to receive their education not only in English and French but also in other languages, upon request to boards of education or the Minister by interested individuals. The province does not limit French instruction to francophones, or any of the other languages to people of that ethnic background. The belief is that any individual may become functionally bilingual if he or she so desires.

The provisions of the School Act allow for the establishment of Local Advisory Boards. These Local Advisory Boards have the right to request French language instruction and the right to nominate teachers for the program. A school board is required to institute, within a reasonable time, French language programs when so requested. Supplemental grants per pupil as well as transportation grants have encouraged the school jurisdictions to offer the French immersion programs.

Even though Alberta is the only province (Council of Ministers of Education, 1983:34) that has made no distinction between anglophone and francophone pupils in the setting of French language programs, the province has been forced to revamp the present system to reflect the reality. For example, two private francophone schools at first offered French language schooling for francophone students in Edmonton and Calgary. The Bugnet School, in Edmonton, has since closed its doors. Most of the students moved to the publicly funded francophone school (Maurice Lavallee Elementary-Junior High School). Specifically, in September, 1984, two publicly funded minority French language schools were also accepting students for grades E.C.S. to six in Edmonton and Calgary with plans to phase in the grades seven to nine classes. As of 1986, French was offered officially to distinct francophone student classes up to grade 12 for the Edmonton Separate School District jurisdiction. However, neither the School Act nor regulations make provision for separate instruction or facilities for francophone students.

In addition to French language programs for francophones and French immersion programs for Anglophone students, Alberta also has extended or bilingual programs in Chinese, Arabic, Cree, Hebrew, Polish and Ukrainian. The language of instruction, other than English or French, may vary from a minimum of 25 per cent to a maximum of 50 per cent of the instructional day at the elementary and secondary level. Second language programs taught as a subject are also offered in German, Latin, Spanish, Italian, Japanese, and Ukrainian.

In Alberta, the School Act provided the legal basis that allowed the establishment of French for a maximum of 100 per cent of the instructional week at the primary level and 80 per cent of the instructional week at the intermediate elementary and secondary levels. English must be taught at the intermediate elementary and secondary levels. Heritage languages instruction is also permitted to a maximum of 50 per cent of the instructional week with the remaining percentage being in English. However, the School Act is a provincial statute that is amended periodically by the legislature.

The Charter, however, includes restrictions on provincial rights to legislate and regulate education that affect the official minority language of that province. In the House of Commons Debates (October 6, 1980:3286-3287), Jean Chrétien (cited from Anderson, 1983) summarized the basis for including section 23 in the Charter:

> Mr. Speaker, this government holds the view that such rights must be protected in the constitution because they are fundamental to what Canada is all about. When minority language education rights are taken away, the right to take up a job in any part of Canada is seriously impaired. English-speaking Canadians, if they move to Quebec, want to have the right to send their children to school in their own language. Indeed, Mr. Levesque and Quebec government members pat themselves on the back for doing so, therefore, I do not see why that could not be enshrined and confirmed in the constitution.
>
> Similarly, French-speaking Canadians do not want to move to other parts of Canada unless they can send their children to school in their own language. The only way to achieve this is to guarantee such rights in the constitution. In effect, without a guarantee of minority language education rights, there can be no full mobility rights.
>
> . . . For the first time in Canadian history, the education rights of official language minorities all across the country will be guaranteed.

In January, 1981, Chrétien proposed that section 27, which deals with the multicultural heritage of Canadians, be included in the Charter. Later during the House of Commons Debates (February 17, 1981:7375), he said:

> the Charter makes specific reference to the multicultural nature of our society. At the time of confederation our forebears established a new country based on two great cultures, the English and the

> French. Over the last 114 years, Canada has been enriched by the contribution of immigrants from the four corners of the globe. And because Canada prides itself on not being a melting pot, we are establishing today that the *Charter* "shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians". As far as the government is concerned, the multicultural heritage of Canadians is such an essential fabric of our nationhood that it must be reflected in our constitution.

Chrétien also explained the differences between French minority and immersion education. He suggested that section 23 dealt with minorities and concluded that "the *Charter* will have no effect whatsoever on immersion courses" (cited in Anderson, 1983:59). Mr. R. Tassé, the then Deputy Minister of Justice, also gave his interpretation of what was meant by first learned language. He suggested that the French minority parents will have to indicate that they, as parents, still understand the language. The courts of New Brunswick, Ontario, Quebec, and Alberta have dealt with such issues.

Specifically, four court cases are reported that dealt with francophone and immersion instruction rights, numbers and geographical entitlements, and French-speaking and English-speaking rights.

Two francophone organizations objected to the English-speaking board's practice of accepting francophone students in its French immersion programs. The case, *La Societé des Acadiens du Nouveau-Brunswick Inc. and L'Association des Conseillers Scolaires Francophones du Nouveau-Brunswick* v. *Minority Language School Board No. 50* (1983), was heard in New Brunswick's Court of Queen's Bench in the Judicial

District of Edmunston. It ruled that a

> parent is free to register his [or her] child in a French or English school system, provided that the child has a sufficient knowledge of the chief language of instruction in the school.. . .

Specifically, in 1981, the School Act of New Brunswick was amended to provide for the establishment of separate French and English school systems to replace the bilingual systems. In the Grand Falls region, a minority English language school board had been established. The English language school board accepted francophone students into its English and its French immersion programs intended for anglophone students. As a consequence, two francophone organizations objected to the practice and brought action. The trial division of the New Brunswick Court of Appeal in the judicial district of Edmundston heard the case and ruled that a school board of one language may not offer immersion training in the other language to a student who can already function in the other language.

In Ontario, the provincial government requested, in a Reference to the Ontario Court of Appeal, whether or not the Education Act, 1980 of Ontario (sections 258 and 261) was inconsistent with the Charter. The court ruled that the numbers requirement was inconsistent with the Charter, that parents had the right to manage and control their own classes of instruction, that the requirements of the Charter applied to both the separate and public boards, and that the province had the right to accord minority language instruction in denominational schools without violating section 93.

Specifically, in a reference, Education Act of Ontario and Minority Language Education Rights (1984), the Lieutenant-Governor, by Order in Council, asked the Ontario Court of Appeal for its opinion on four questions regarding the constitutional validity of certain provisions of the Education Act. In an abbreviated form, the court was asked to answer the following:

1. Are sections 258 and 261 of the Education Act inconsistent with the Charter (numbers requirement)?

   The Ontario Court of Appeal ruled that:

   1. the requirements in the Education Act provide French language classes to a much narrower class of people than the Charter guarantees,
   2. schools have too much discretionary power in providing French minority language instruction,
   3. the arbitrary limits of 25 students for elementary and 20 students for secondary education contravene the Charter, and
   4. the provisions of the Charter transcend the geographical boundaries of school boards.

2. Is the Act inconsistent in that "members of the French linguistic minority in Ontario entitled to have their children receive instruction in the French language are not accorded the right to manage and control their own French language classes of instruction and French language educational facilities"?

   The Ontario Court of Appeal ruled that:

1. fundamental fairness impels the court to say that parents have the right to manage and control educational facilities used by them.

3. "Do minority language educational rights in the . . . Charter apply with equal force and effect to minority language instruction and educational facilities provided for denominational education . . . and public education under the Education Act?"

   The Ontario Court of Appeal ruled that:

   1. the requirements of the Charter "on its face applied to both."

4. "Is it within the legislative authority of the Legislative Assembly of Ontario to amend the Education Act . . . in relation to boards of education, to provide for the election of minority language trustees to Roman Catholic separate school boards to exercise certain exclusive responsibilities as minority language sections of such school boards?"

   The Ontario Court of Appeal ruled that:

   1. the province has the right to establish an effective method of providing minority language instruction. "The fact that French-speaking Roman Catholics were unable to rely on section 93(1) to protect their linguistic rights does not preclude them from relying on section 23 of the Charter to assert those rights."

In Alberta, l'Association de l'école Georges et Julia Bugnet claimed that its "rights under sections 15, 23, and 27 of the Charter have been violated." Mr. Justice Purvis of the Court of Queen's Bench of Alberta in the Judicial District of Edmonton stated that, in Jean Claude Mahé, Angeline Martel, Paul Dubé, and L'Association de L'école Georges et Julia Bugnet v. Her Majesty the Queen in Right of the Province of Alberta (1985), he approved of the "comments of the Ontario Reference (1984) case which stated that a degree of linguistic minority management and control of programs and facilities should be guaranteed."

Specifically, three individual plaintiffs asserted that section 23 entitled them to require that their children receive primary and secondary school instruction in the French language in francophone educational facilities to be paid for from public funds.

Mr. Justice Purvis stated that:

> I have found that the numbers of students in the Edmonton metropolitan area are sufficient and the rights in the first two subsections of section 23 apply.
>
> . . . section 23 bestows a degree of exclusive management and control over provision and administration of minority language schools. It is the responsibility of the legislature to guarantee that these rights are available to the minority citizens who qualify under section 23(a) and (b) . . . I approve of the comments of the Ontario Court of Appeal in the 'Ontario Reference' case.. . ."
>
> The School Act is in conflict with the Charter to the extent that it does not provide for a degree of control and management to the citizens whose rights are established under section 23 . . . and to the extent that sections 158 and 159 are permissive and not mandatory.

Upon appeal, Messrs Justices Kerans, Moir and McClung of the Court of Appeal stated the following:

> Section 23(3)(a) confers upon each Albertan student or parent in the section 23 group the constitutional right to effective instruction in French at the primary and secondary level out of public funds. That right includes anything that for persuasive pedagogical reasons,

> is found to be effective, but is also limited to what is warranted in terms of numbers and consequential costs, and by any competing values protected by section 1.. . .
>
> Section 23(3)(b) confers upon members of the section 23 group the right, together, to organize, manage and control an educational system for section 23 students, but only where in a province that right is warranted by numbers and consequential costs. That right also is subject to limitation on invocation of section 1.
>
> Numbers in the Edmonton area trigger section 23(3)(a), but the plaintiffs have failed to prove that they trigger section 23(3)(b).
>
> Neither sections 15 nor 23(3)(b) necessarily creates the right to a francophone local school district; rather, the choice of institutional form for implementation of section 23 rights is, subject to judicial review, left to the province.. . .

They also indicated in their summary statement that Alberta had done nothing, de jure, to implement those rights or to delegate the performance of its obligations under 23(3)(a) for

> it would be imprudent for the courts to go further at this time than to say what has here been said. Now that the law is explained, Alberta can act. I would dismiss the appeal. Yet, the appellants can claim some success because some of the arguments of the appellant about the meaning of the constitution have been accepted.

A similar case occurred affecting English-speaking minority rights in Quebec, in which sections 72 and 73 of Bill 101 were challenged by the Quebec Association of Protestant School Boards et al. in the Supreme Court of Canada. The Supreme Court affirmed the judgment of Justice Deschenes of the Quebec Supreme Court and ruled that specific parts of Bill 101 were inconsistent with sections 1, 2(a), 23, 32(1), and 33(1)(2) of the Charter.

The Supreme Court of Canada, in Quebec Association of Protestant School Boards v. A.G. Que (1984), stated that

> assuming that section 1 of the Charter, which guarantees the rights and freedoms contained in that document, applies to all the rights so guaranteed, including that conferred by section 23, section 23 is not like other provisions of the Charter. It is not a codification of essential pre-existing and more or less universal rights. The special

> provisions of section 23 of the Charter are unique and peculiar to Canada. It was adopted with the regimes governing the Anglophone and Francophone linguistic minorities in various provinces in Canada in mind. The framers of the constitution regarded as inadequate some and perhaps all of the regimes in force at the time the Charter was enacted, and their intention was to remedy the perceived defects of these regimes by uniform corrective measures, namely those contained in section 23 of the Charter, which were at the same time given the status of a constitutional guarantee. The framers of the constitution intended by section 23 to establish a general regime for the language of instruction, not a special regime for Quebec; . . . the limitations which this regime imposes . . . cannot possibly have been regarded as coming within 'such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.. . .'

Of note, in Quebec Association of Protestant School Boards v. A.G. Que.(1985), the attempts by the government to reorganize the jurisdictions from a religious to a linguistic orientation was ruled invalid because of section 29 of the Charter.

Summary

The enactment of the Constitution Act, 1982 meant that Canada no longer had a "constitution similar in principle to that of the United Kingdom." The Constitution Act, 1867 was silent as to what constituted "a constitution similar to that of the United Kingdom," whereas the Constitution Act, 1982 was explicit.

The Charter is a constitutional statement. The task of "expounding" the constitution of Canada is different from that of "interpreting" a statute of Parliament or of the legislatures of the provinces. It is different because a constitution must provide an ongoing framework to regulate the exercise of governmental power. Moreover, according to

Chief Justice Dickson, a constitutional act cannot be easily repealed. Because of this fact, it must be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers.

Thus, with the patriation of the Constitution Acts and the entrenchment of a Charter, the traditional reliance on common law and criminal law is superseded by a Charter that specifies the rights of individuals within the state. This is a massive shift of emphasis in the protection of individual rights.

Specifically, the most important sections of the Charter are sections 1 and 2. Section 1 guarantees the rights and freedoms set out and outlines how such rights may be limited. Section 2 guarantees fundamental freedoms. These limitations were explained in the Oakes (1986) case.

Section 7, which deals with the principle of fundamental justice, guarantees that a person whose rights are adversely affected has certain procedural rights to ensure fairness. In Duke (1972), fundamental justice was defined. In R. v. Jones (1986), the Supreme Court of Canada ruled that section 7 had not been violated.

Under section 8, search and seizure procedures have to be balanced with the school's obligation to supervise students' actions and society's understanding of what is reasonable in a free and democratic society. This was affirmed in the James (1986) case.

Cruel and unusual treatment or punishment, as per section 12 of the Charter, occurred when the severity of the punishment did not relate to the seriousness of the offence and when punishment was imposed arbitrarily without any sense of fair play. In the Peel (1987) case, the court chastized the principal and board for violating the principles of justice.

Section 15 affirms opposition to all forms of discrimination and recognizes affirmative action. Under section 15, the amelioration of conditions of disadvantaged individuals or groups are permitted. In the Big M Drug Mart (1985) case, the court stated that, in the interest of true equality, differentiation in treatment may be required.

Section 23 defines the minority language educational rights of the French or English citizens of Canada. Specifics as to the meaning of section 23 were adjudicated, for example, in the Ontario Reference (1984), Mahe (1985) and Quebec Association of Protestant Schools (1984) cases. Also, Canada has other ethnic groups. Section 27 provides for the rights of these minorities to preserve and enhance their cultural heritage.

The Charter has forced a shift away from one of collective rights and attitudes to one of collective and individual rights and attitudes.

CHAPTER 4

Perceptions on Pupil Control: Within the Context of Fundamental Justice

The purpose of this chapter is to report the analysis of the data gathered concerning pupil control within the context of fundamental justice. Sub-problem one addresses the question:

> What are the perceptions of school authorities concerning "Legal Rights" of pupils in the school in the context of the Charter?

Information was gathered on how the respondents perceived pupil control as it relates to section 7 of the Charter. Section 7 reads as follows:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 7 and commentaries on section 7 of the Charter were used as a guide in developing the five situations and their accompanying statements. Some of the statements in "Your Personal Responses: Part Two" were also guided by section 7. Respondents were given a series of situations, followed by statements dealing with each situation within the context of fundamental justice relative to the Charter. However, neither the Charter nor terms associated with it were mentioned in the situation or in the statements. The respondents were asked whether they agreed or disagreed with the statement. Some respondents also chose to add comments;

these are reported separately after the report on each situation.

The analyses of the data for the 10 statements of situation 1, the one statement of Situation 2, the six statements of Situation 3, the two statements of Situation 4, the one statement of Situation 5, and the four statements of "Your Personal Responses" are reported, respectively, in Tables 2 to 7. The response percentages of the sub-groups are reported only where differences were statistically significant.

Situation #1: Punishment of a Student.

The respondents were asked whether they agreed or disagreed with 10 statements dealing with the punishment of a student by the principal. Four statements dealt with the school and pupil control, two with students, one with parental consultation, and three with policies and regulations. The respondents were requested to answer with reference to the following situation:

> A student has been punished by the principal for his/her blatant disregard of a major school regulation or directive.

The School and Pupil Control. Of all respondents, 82.6 per cent agreed that "teachers have the responsibility to control student behaviour" (item 1, Table 2). Of the respondents, 70.6 per cent favoured educators having the "same authority to control students as do the parents" (item 2). More specifically, 78.0 per cent of the teachers and 77.6

Table 2
Perceptions on Pupil Control
in Situation #1

Situation: #1

A student has been punished, by the principal, for his/her blatant disregard of a major school regulation or directive.

Questionnaire Statements	% Agree	% Disagree
The School and Pupil Control		
1. The teacher has the responsibility to control student behavior.	82.6	17.4
2. Educators should have the same authority to control students as do the parents.	70.6	29.4

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept. Ed.	Trustees
78.0%	77.6%	52.9%	54.2%	36.4%

Questionnaire Statements	% Agree	% Disagree
7. Teachers should have the privilege of refusing to teach students who blatantly disregard major school regulations or directives.	75.6	24.4

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
91.5%	67.9%	62.5%	77.3%	63.5%

Questionnaire Statements	% Agree	% Disagree
10. The school principal should have the right to give a transgressing student an appropriate punishment.	97.5	02.5

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
100.0%	98.9%	88.9%	95.7%	90.9%

Questionnaire Statements	% Agree	% Disagree
The Student		
3. Students should be accorded the opportunity to explain the situation in cases of a major infraction of school regulations or directives.	98.5	01.5

Table 2 (continued)
Perceptions on Pupil Control
in Situation #1

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6. The right of the other students to an education should supersede the rights of the individual who is found guilty of a major school infraction.	92.0	08.0

Percentage of each group that responded with "Agree"

Public School Authorities	Separate School Authorities
95.2%	75.7%

Parent Consultation

4. Parents should be consulted before action is determined in cases of major infractions of school regulations or directives.	77.9	22.1

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept. Ed.	Trustees
86.4%	65.1%	88.2%	91.7%	90.9%

Policies and/or Regulations

5. The present method of expulsion, which allows school boards the authority to expel a student without the parent having the right to appeal, other than through the Minister of Education, adequately protects the rights of the student.	54.9	45.1

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept. Ed.	Trustees
55.0%	57.8%	61.1%	30.4%	80.0%

11. Policies should be formulated by the school board that specify student appeal procedures for cases in dispute.	96.5	03.5
12. I believe that regulations should exist to lessen the possibility of inconsistency among school administrators in reaching decisions that affect the privileges of individual students.	84.7	15.3

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
93.2%	75.0%	82.4%	91.7%	100.0%

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* The percentages for sub-groups are provided only where the differences are significant.

per cent of the principals (as compared with 36.4 per cent of the trustees) favoured the statement. Of the superintendents and Department of Education respondents, 52.9 per cent and 54.2 per cent, respectively, agreed. There was a significant difference of opinion between the teachers and principals, and the trustees.

Of the respondents, 75.6 per cent agreed that "teachers should have the privilege of refusing to teach students who blatantly disregard major school regulations or directives" (item 7). There was a significant difference of opinion between the teachers and the other respondents.

Most (i.e., 97.5 per cent) respondents agreed that the principal should have the right to give "a transgressing student an appropriate punishment" (item 10). However, all the teachers and 98.9 per cent of the principals agreed with the statement as compared with 88.9 per cent of the superintendents.

The Student. Strong support was given to the principle of "fundamental justice" as it relates to the right of the student to explain the situation (item 3). Moreover, the concept of collective rights for the students in the classroom over individual rights of a student who "is found guilty of a major school infraction" (item 6), was endorsed by 92.0 per cent of the respondents. A significant difference of opinion between the public and separate school respondents on collective rights was indicated. As Table 2 shows, 95.2 per cent of the public school respondents, as compared with 75.5

per cent of the separate school respondents, favoured the collective rights of students.

Parent Consultation. About three-quarters of all respondents stated that parents should be consulted before action is determined in cases of major infractions (item 4). However, differences of opinion occurred between the principals and the other four groups. Only 65.1 per cent of the principals agreed, whereas 91.7 per cent of the Department of Education respondents, 90.0 per cent of the trustees, 88.2 per cent of the superintendents, and 86.4 per cent of the teachers agreed.

Policies and Regulations. The section of the Alberta School Act (School Act) dealing with student expulsion (item 5) was supported by 54.9 per cent of the respondents. The present School Act gives parents and students the right to appeal directly to the Minister of Education to review the actions of the school jurisdiction rather than to the jurisdiction that decided on the expulsion. A difference of opinion occurred between the Department of Education respondents and the remaining respondents. Table 2 shows that 30.4 per cent of the Department of Education respondents favoured the present School Act as compared with 80.0 per cent of the trustees, 61.1 per cent of the superintendents, 57.8 per cent of the principals, and 55.0 per cent of the teachers.

Board policies that "specify student appeal procedures for cases in dispute" (item 11) were supported by 96.5 per cent of the respondents. About 85 per cent of the respondents also favoured enactment of regulations "to lessen the possibility of inconsistency among school administrators in reaching decisions that affect the privileges of individual students" (item 12). However, only 75 per cent of the principals agreed with the statement in contrast to 100.0 per cent of the trustees, 93.2 per cent of the teachers, 91.7 per cent of the Department of Education respondents and 82.4 per cent of the superintendents.

Written Comments by the Respondents

Fourteen of the survey respondents commented on the statements in Situation 1. Some of the same respondents added caveats to the situation and/or statements. For example, with reference to Situation 1, one of the respondents wrote "I think there would be a difference between the students being very young (e.g., elementary) or above compulsory school age." One of the respondents added the statement "there will always be personal differences in reaching decisions" (item 12). Another respondent stated as follows:

> Definitions are critical. What is a right? Do rights carry responsibilities? Do you mean equal or equity? There is a difference.

A superintendent added this comment to the statement on expulsion (item 5): "the parents always have the right to a hearing with the Board. I've never worked for a Board where this is not the case." It should, however, be noted, that according to the School Act, 1982, the "right" is not in the statute.

Personal Interviews

During the interviews, 19 respondents were asked to reflect on the situation and three statements on The School and Pupil Control, one statement on The Student, one statement on Parent Consultation, and two statements on Policies and/or Regulations. The respondents were asked whether they agreed or disagreed with the statements and to elaborate on any of them.

The School and Pupil Control. Based on Situation 1, a majority of the respondents interviewed agreed that "educators should have the same authority to control students as do the parents" (item 2) One of the respondents suggested that it can be assumed that many educators are responsible parents and that their "response to the students is more in line with that of a parent." As educators, according to one of the principals, "we should consult with the parents prior to decisions being taken. Furthermore, we are expected to act reasonably."

However, other respondents suggested that the educator replaces the parent during school hours, but is not the parent. Even parents have restrictions on their actions. A trustee stated that educators should remember that they are here "to help the parents, and not be the determiners of educational policy."

The word "privilege" was critical in the statement dealing with "the privilege of refusing to teach students who blatantly disregard major school regulations or directives" (item 7). According to one of the principals, teachers should be able to refuse admission to students who make "it unsafe for other students. Teachers should have the right to refuse entry into the classroom or the school of such students." A principal added that "the safety of the other students is more important than the rights of the individual." However, the respondent of one association, who also agreed with the statement, stated that the word "privilege" was meant to be a collective right for teachers. The "entire teaching body is responsible to teach all students. One privilege is balanced by an equal responsibility." For those respondents who favoured the "collective privilege," most also agreed that the refusal of entry was a last resort after other solutions had failed. These respondents further added that such a process caused some problems. As one trustee said, the process is not "clean cut."

The word "blatantly" caused some concern for respondents who disagreed. According to a superintendent, "ideally speaking [blatant disregard of school regulations] shouldn't have to happen if the principal is on the ball." Other principals and superintendents suggested that teachers were not always aware of the situation in the school or the home that may dictate other actions or decisions. These respondents also stated that teachers having the privilege to refuse entry to a student may in fact cause a problem to other teachers on the staff. Instead of being resolved by the simple solution, the problem may be compounded.

Certain respondents would neither agree nor disagree with statement 7. According to them, great teachers aim at teaching the unteachable without harming the rest of the class. Unfortunately, there may be students that even a master teacher cannot teach. A mechanism to support the teacher and to find a solution that will benefit the students needs to be found. The respondent of one association stated that

> some students do not want to be in school. Instead of advocating that teachers have the right to refuse entry to the classroom of such students, it may be more productive to explore some form of alternative education for these students because we do have a "captive audience." Because we have a captive audience, it is our responsibility to find alternative mechanisms that support the teacher's and student's needs.

The right to give a transgressing student an appropriate punishment by the principal (item 10) met with little disagreement. However, the responses varied. For example, a teacher stated that the principal had to have the right to punish students, "otherwise you lose all authority." Other respondents argued that appropriate discipline policies in the school should be known to all teachers, students and parents. A trustee suggested that the discipline policy be reviewed annually by the teachers, students and parents because "the community changes and, therefore, a discipline policy may have to change yearly in order to meet the expectations of the community." Most of the other respondents stated that the phrase "appropriate punishment" was, as expressed by the respondent of one association, "dependent upon the school and community situation. We [meaning parents and teachers] have to get involved in the school situation." A principal suggested that junior and senior high students need to be involved in determining "appropriate punishment. The educational experience is important to the students and, quite often, the students are harsher than we are."

The few respondents who disagreed with the statement did so because they strongly believed that appropriate punishment had to be decided after consultation with the parents. A principal stated that "one must protect oneself in the light of what is happening." He seemed to indicate some concern with the effects of the Young Offenders Act on pupil control.

The Student. A principal suggested that the "rights of the individual disappeared when the rights of the other kids were shortchanged" (item 6). A teacher added that all children have the right to "safety of themselves and freedom of distraction."

The respondents who disagreed with the statement argued, in the words of one principal, that "you can't have both--choose one or the other which is more important at that moment." One of the trustees strongly argued that "to be found guilty of committing a major infraction doesn't remove the right to an education." Some interviewees raised additional concerns. For example, according to a Department of Education respondent, "much is unsaid about why the infraction took place. Maybe the minority could be right and, if you take the statement literally, you could have tyranny of the majority." The same trustee suggested another alternative. The problem may not be the infraction as much as the fact that the "conflict resolution process has been improperly done by someone. The result is a conflict that forces choices, instead of a situation in which both sides feel their grievances have been heard and taken into consideration."

Parent Consultation. Most of the interviewed respondents agreed that "parents should be consulted before action is determined in cases of major infractions of school regulations or directives" (item 4). Most also stated that parents should be involved in the problem-solving process. According to these respondents, parents are sometimes the cause of the child's problems. The parents, according to one of the principals, need to be "forced to pay attention to what is happening in ~~the~~ lives of their children." Others added that it was good public relations to involve the parents in the problem-solving process.

A few disagreed with the statement. One of the principals, while disagreeing with the statement, said, "If it [meaning decision and/or action] didn't involve the safety of others, then parents should be consulted. If, however, the safety of other students or the classroom was at stake, then the principal had to take the appropriate decision and/or action."

Policies and/or Regulations. There seemed to be some disagreement about the intent of the School Act in dealing with the "present method of expulsion" (item 5). Other than questioning the intent of the School Act, most of the respondents agreed that much had gone on before the expulsion took place and that the student might be better off to have an outsider review the situation. However, a vice-principal stated, "I would hate to see the courts involved in the appeal process." Other respondents, especially principals, also argued that having a third party involved may in fact cause more harm than good. "What happens," asked a superintendent, "when the parents prevail upon the minister to re-instate their child back into a volatile situation for that student and the other students?" According to this respondent, it is better that "local knowledge of the situation prevail."

Probably the most convincing argument against the present system of appeal to the Minister of Education was stated by a principal who suggested that "the present system doesn't protect the rights of the student if injustice has occurred, because the damage has already been done. What we need is an appeal system that is more cognizant of that student's needs -- maybe an ombudsman."

Of the 19 respondents interviewed, 3 agreed with the statement dealing with having regulations to "lessen the possibility inconsistency among school administrators in reaching decisions that affect the privileges of individual students" (item 12). Specifically, a superintendent, a Department of Education respondent and a principal stated that monitoring by central office should be adequate. All three respondents stated that there should be "as few as possible" regulations because they can become a problem in themselves. However, consistency within a school and a jurisdiction was considered important. Circumstances may vary among the jurisdictions making it impossible to have a consistent set of regulations for the whole province. Some principals suggested that the Young Offenders Act has attempted to regulate the interrogation procedures used by school authorities. A superintendent suggested that "boards have now developed major policies and guidelines to prevent inconsistency in the decision-making process that affect the privileges of individual students."

However, the remaining 16 respondents disagreed that regulations should exist to lessen inconsistencies among administrators. For example, a Department of Education respondent suggested that "more regulations mean that more problems can occur. You have a rule; everyone wants to enforce the rule. Some schools are so different that even the decisions and the punishments are going to be different." One superintendent asked "Can you expel a child from the only existing school that serves that child's needs?" Other respondents stated that regulations limit the freedom of the people whereas a principal reacted by saying, "Inconsistency -- so what. An action may be acceptable in one zone or area and not in another. Rural areas may have different expectations than urban zones or area - so what." Another principal commented that "you choose the principal, who has a lot of classroom experience, and leave it to him or her to make the judgment. Circumstance can't be the same for each case. It is better it be at the local level."

Situation #2: Locker Search

The respondents were asked whether they agreed or disagreed with one statement based on the following situation:

> The school administrator is concerned that certain students are hiding liquor or drugs in their lockers for purposes of bootlegging or selling,

Locker Control. The respondents were asked whether or not "teachers and principals should be allowed to use their judgment in protecting the student's right to privacy" (item 15, Table 3). Most respondents agreed that teachers and principals should have that discretion. Specifically, about 71 per cent of the superintendents agreed, as compared with 96.5 per cent of the principals, 91.7 per cent of the teachers, 87.0 per cent of the Department of Education respondents and 81.8 per cent of the trustees.

Personal Interviews

During the interview sessions, the respondents were asked whether they agreed or disagreed with the statement "teachers and principals should be allowed to use their judgment in protecting the student's right to privacy" (item 15).

Table 3
Perceptions Dealing with Locker Control and Some Significant Differences of Opinion Among the Respondents Relative to Situation #2

Situation #2

The school administrator is concerned that certain students are hiding liquor or drugs in their lockers for purposes of bootlegging or selling.

	Questionnaire Statements	% Agree	% Disagree
15.	Teachers and principals should be allowed to use their judgment in protecting the student's right to privacy.	90.9	09.1

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
91.7%	96.5%	70.6%	87.0%	81.8%

* The percentages for sub-groups are provided only where the differences are significant.

All except one of the interviewees agreed with the statement. Most of the respondents stated that the educators should have the discretionary right to judge each situation. One of the principals, for example, agreed that the right to privacy is important, but at the same time stated that the "judgment must be left to the teachers and principals as we do with the police." Another principal stated that "privacy is different when you talk about strip and search as compared with searching a locker." The principal added that "as to lockers, they belong to the school; they're not private property anyway." Separate school respondents suggested that such situations existed mainly because of an attitude or atmosphere that the school projects. One of the separate school principals suggested that there may be problems if the police have to be involved, but added that much of that problem can be eliminated if there is "a leadership or an atmosphere in the school that emphasizes 'we don't expect that to happen in our school'."

The respondent of one association stated that "earlier in my education career, I believed that the end justifies the means--not now. I no longer believe that you 'do right by doing wrong'."

Situation #3: Police Interrogation

The respondents were asked their opinions on police interrogation and the roles of the parent, the school and the Department of Education. They were to base their answers on the following situation:

> Two police constables come to the school to question a few students concerning alleged criminal activities. During the questioning, the police request that the students' lockers be searched. The principal complies and has the students open their lockers.

The Role of the Parent. About 97 per cent of the respondents stated that "parents should be informed when their junior or senior high school student is questioned by the police" (item 23, Table 4). Of the respondents, 67.5 per cent agreed that "police questioning or interrogation should be

Table 4
Perceptions Dealing with Locker Search and Some Significant Differences of Opinion among the School Respondents and between the Public and Separate Respondents Relative to Situation #3

Situation #3

Two police constables come to the school to question a few students concerning alleged criminal activities. During the questioning, the police request that the students' lockers be searched. The principal complies and has the students open their lockers.

Questionnaire Statements	% Agree	% Disagree
Role of the Parent		
23. Parents should be informed when their junior or senior high student is questioned by the police.	96.5	03.5
25. Police questioning or interrogation should be done in the home except in cases of urgency.	67.5	32.5

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
51.7%	77.0%	76.5%	62.5%	72.7%

Questionnaire Statements	% Agree	% Disagree
Role of the School		
21 The practice of police interrogation of students in school can be justified.	80.4	19.6
22 Parents should be informed when their elementary child is questioned by the police.	99.5	00.5
24 The school administrator or a designate should be present for all police questionning in any school.	91.5	08.5

Percentage of each group that responded with "Agree"

Public School Authorities	Separate School Authorities
93.8%	81.1%

Questionnaire Statements	% Agree	% Disagree
Role of the Deparment of Education		
27. The Department of Education should establish regulations that define the manner in which a student can be questioned by other than school authorities.	56.3	43.7

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* The percentages for sub-groups are provided only where the differences are significant.

done in the home except in cases of urgency" (item 25). For 51.7 per cent of the teachers, 62.5 per cent of the Department of Education respondents and 72.7 per cent of the trustees, police questioning should be done in the home. Significantly more principals and superintendents, 77.0 per cent and 76.5 per cent respectively, supported the role of the parent.

Role of the School. About 80 per cent of the respondents agreed that "the practice of police interrogation in school can be justified" (item 21, Table 4). The role of the school in police questioning is perceived to be clear. According to 99.5 per cent of the respondents, "parents should be informed when their elementary child is questioned by the police" (item 22). Also, 91.5 per cent of the respondents expect "the school administrator or a designate should be present for all police questioning in any school" (item 24). However, there was a significant difference of opinion between the public and separate school respondents: 93.8 per cent of the public school respondents as compared with 81.1 per cent of the separate school respondents favoured having an administrator or a designate "present for all police questioning."

Role of the Department of Education. Of the respondents, 56.3 per cent agreed that the Department of Education should "establish regulations that define the manner in which a student can be questioned by other than school authorities" (item 27).

Written Comments of the Respondents

Nine respondents added written comments to some of the statements related to Situation 3. The statement "police interrogation of students in school can be justified" (item 21), according to a respondent, was "loaded." By adding such comments as "warrant and court order," "adults can be questioned at work" and "but only when questioning is not possible elsewhere," other respondents suggested that students should not be made an exception.

Informing the parents of junior or senior high school students (item 23), according to a respondent, is not always possible because "in senior high, some students don't live at home."

Personal Interviews

The respondents being interviewed were asked to reflect on the situation and statements 25 and 24.

Role of the Parent. Of the 19 respondents, 10 agreed that police questioning or interrogation should be done in the home except in cases of urgency (item 25). The respondents wanted the parents to have the primary responsibility for the children. According to a teacher, "Kids are to be in class. They ~~are not~~ there to be questioned." Furthermore, one secondary teacher cited cases in which interviews had to be "shut-down" because police exercised bad judgment by browbeating the student instead of asking questions. A principal also agreed that the primary responsibility rests with the home, but added that we are assuming that the home is supportive and that "the child may have to be protected from the parents in cases where such support is not indicated." A secondary principal suggested that interviews in the school "caused embarrassment to the kids and cause for all kinds of gossip."

The other nine respondents stated that as citizens of our country, we should help the police do their job. According to a principal, "we shouldn't have to say where the students are to be interrogated. This should be left to the authorities. We want flexibility to deal with the students. What about the police?" Such statements seemed to reflect the responses of those respondents who disagreed that police questioning be restricted to the home.

Role of the School. The discussion revolved around the statement "the school administrator or a designate should be present for all police questioning in any school" (item 24). Most of the respondents agreed that the student needs the protection of the school in such cases. They indicated that they wanted the administrator to be present. Respondents who disagreed with the statement stated that, at the age of 16, a student can choose whom she/he likes to be present, and that, for younger students, the principal or designate is there. One teacher opposed having a teacher as the designated person because "the kids need all the assistance possible. The discussion may prejudice the teacher against them." In other words, the respondents who disagreed, preferred having another adult, preferably the parent, in attendance.

Situation #4: Classroom Punishment

The respondents were presented with two statements on student control in the classroom setting. They were to answer with reference to the following situation:

> In response to the actions of a few students, a whole class is punished for their lack of deportment.

Student Control in the Classroom Setting. Asked whether "an explicit code of teacher rights and responsibilities to the student would encourage less arbitrary forms of control in the school" (item 33, Table 5), 66.3 per cent of the respondents agreed. Also, 97.5 per cent of the respondents agreed that the teacher should take into account the ability of the child(ren) "to understand that a given act is willful and disruptive to the class" (item 34).

Written Comments of the Respondents

Four of the respondents added comments to the statements. The respondents agreed that a teacher "should take into account the ability of the child(ren) to understand that a given act is willful and disruptive to the class" (item 34), but one respondent wrote that this "creates problems. Discriminatory punishment may not be considered fair by others."

Table 5
Perceptions on Student Control in a Classroom Setting Relative to Situation #4

Situation #4

In response to the actions of a few students, a whole class is punished for their lack of deportment.

	Questionnaire Statements	% Agree	% Disagree
33.	An explicit "Code of Teacher Rights and Responsibilities to the Student" would encourage less arbitrary forms of student control in the school.	66.3	33.7
34.	The teacher's actions to control student misbehaviour should take into account the ability of the child(ren) to understand that a given act is willful and disruptive to the class.	97.5	02.5

Personal Interviews

As there were no significant differences of opinion among the groups of respondents, statements 33 and 34 were not pursued during the interview sessions.

Situation #5: Punishment such as Writing of Lines

The respondents were asked if the principle of "reasonable" action should be legislated as part of the School Act. Their answer was to be guided by the following situation:

> In response to a classroom situation, a teacher imposes a punishment, such as the writing of a massive number of lines and/or a large number of detention periods.

Reasonable Action. Of the respondents, 64.0 per cent disagreed that "'reasonable' action or decision on the part of the teacher or principal can be legislated as part of the School Act" (item 36, Table 6).

Teachers were the only group in which a small majority agreed with the statement. Some significant differences of opinion occurred between the teachers and principals and the trustees. There were no significant differences of opinion between the trustees and the superintendents, and the trustees and the Department of Education respondents. As Table 6 shows, none of the 11 trustees and only 11.8 per cent (2 of the 17) superintendents agreed with the statement.

Written Comments of the Respondents

Two of the respondents noted that "only in a very general way" should reasonable action or decision on the part of the teacher or principal be legislated as part of the School Act.

Personal Interviews

Two teachers, one superintendent, one association respondent and two principals agreed that "'reasonable' actions or decisions . . . can be legislated as part of the School Act (item 36, Table 6). The teachers wanted more guidance in the conflict-solving procedures. According to one teacher, "the more limitations that can be in the School Act, the less chance there is for arbitrary decisions or actions by school authorities." A superintendent suggested that "reasonable action or decision" can be legislated because it goes "hand in hand with school responsibilities." However, when pursued, these respondents tended to add caveats such as "within limits" or "not every situation."

Table 6
Perceptions on Reasonable Action or Decision and Some Significant Differences of Opinion Among the School Respondents Relative to Situation #5

Situation #5

In response to a classroom situation, a teacher imposes a punishment, such as the writing of a massive number of lines and/or a large number of detention periods.

*Questionnaire Statements	% Agree	% Disagree
36. I believe that what is a "reasonable" action or decision on the part of the teacher or principal can be legislated as part of the School Act.	36.0	64.0

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
55.0%	32.1%	11.8%	37.5%	0.0%

* The percentages for sub-groups are provided only where the differences are significant.

The majority of the respondents interviewed disagreed that reasonable action can be legislated. Such expressions as "that's stupid," "difficult to document," "like legislating morality," "pie in the sky document" and "I'd hate to see that happen" characterized the comments of these respondents. One of the principals added that "it's for the courts to judge -- not the School Act." An association respondent added that "all situations have to be judged within the context; to do otherwise is to fail to recognize the individuality of each student, the community setting and the parental expectations."

Your Personal Responses: Part Two

In "Your Personal Responses: Part Two" of the survey instrument, four statements about pupil control were discussed. The respondents were asked whether they agreed or disagreed with each statement. In part two, there were no case situations that accompanied the statements.

Items 74 and 81 were based on the principle that fundamental justice had to occur when decisions or actions that affect the student were taken. These items were endorsed by 99.0 and 97.5 per cent of the respondents respectively (see table 7). As to privacy of student files, 74.9 per cent of the respondents agreed that access should be restricted (item 78), and 81.1 per cent favoured protecting the privacy of student files (item 79).

Written Comments of the Respondents

Six respondents added comments to some of the statements. A public school jurisdiction superintendent amended statement 74 to read "not only to explain, but to ascertain the chance of recurrence" in order to emphasize that fundamental justice had to occur. As to parent's "right to examine their child's school file(s)" (item 79), three of the respondents agreed, but added the following qualifications: "in certain instances," "for the most part," or "maybe for Grades 1 - 6," thereby stating that parents did not have an absolute right.

A superintendent and a Department of Education respondent stated that the "right to an appeal procedure for actions and/or decisions" (item 81) was already in place. However, the Department of Education respondent wrote "to whom" after the statement, thereby pointing out that the statement needed to specify the authority to whom the appeal would be made.

Table 7
Your Personal Responses: Part Two on Pupil Control

	Questionnaire Statements	% Agree	% Disagree
74.	Teachers and school principals should allow a student the opportunity to explain his/her actions before deciding on a form of discipline or suspension.	99.0	01.0
78.	Access to student files and documents should be controlled and restricted to designated professional staffs.	74.9	25.1
79.	Parents should have the right to examine their child's school file(s).	81.3	18.7
81.	Parents should have the right to an appeal procedure for actions and/or decisions that affect their child.	97.5	02.5

Personal Interviews

The four statements were not reviewed during the interviews because there was general agreement on the four statements relating to pupil control.

Summary

Situation #1: Punishment of a Student. Perceptions about the school, the student, parent consultation and policies and/or regulations were sought from the respondents. Most respondents supported the statements suggesting that teachers have the responsibility to control student behaviour, that they have the same authority as parents and that they have the right to refuse teaching students who blatantly disregard school regulations. Respondents also agreed that the principal has the right to punish transgressing students. Most respondents supported the statement that parents should be consulted before action is determined in cases of major infractions of school regulations or directives.

Most trustees supported the present wording of the School Act on expulsion, whereas only 54.9 per cent of all the respondents supported the statement. According to most respondents, regulations should exist to lessen the possibility of inconsistency among principals. Also, most public school respondents agreed that the right of the other students to an education should supersede the rights of the individual who is found guilty of a major school infraction, whereas about three quarters of the separate school respondents agreed.

The interviewed respondents preferred the authority of the principal in dealing with the entry of students into the classroom or school. Most also felt that it was the principal's role to punish transgressing students. The interviewed respondents also stated that the students' individual rights to explain the situation did not abrogate the collective rights of the other students to an education. Moreover, the respondents argued that the right to an education cannot be denied to a student found guilty of a major school infraction. However, most favoured the collective right of the group over the right of an individual student.

Most of the interviewed respondents questioned the wording of the *School Act*. Most believed that the present method of allowing the school to expel the student was correct. However, they stated that parents should take their appeal to the school board and that the minister should only be involved if the matter could not be handled locally.

Inconsistency in pupil control was not an issue for principals. According to the principals, flexibility is needed to deal with the different demands placed on the school by each community. The other respondents were less supportive of the principals' points of view. They argued that monitoring by the central office would protect the student from administrator inconsistency in reaching decisions that affect the privileges of individual students.

Situation #2: Locker Search. An overwhelming majority agreed that teachers and principals should be permitted to use their judgment in protecting the students' right to privacy.

Situation #3: Police Interrogation. Police interrogation of students in the school can be justified, according to 80.4 per cent of the respondents. About two-thirds agreed that questioning should be done in the home, except in cases of urgency. About three-quarters of the principals agreed, compared with 51.7 per cent of the teachers.

The presence of an adult during all forms of police questioning was supported by most respondents. Most wanted the parents, especially those of elementary students, to be informed of such police action. The respondents also agreed that the administrator or a designate should be present during school based police interrogation in the school.

Though a greater proportion of public than of separate school respondents agreed that an administrator or designate should be present during a police interrogation, said difference did not occur during the interviews. Disagreement seemed to focus on which adult should be present during such interviews. Protecting the privacy of the student was a priority.

A majority of the respondents agreed that there should be regulations defining the manner in which students may be questioned.

Situation #4: Classroom Punishment. A code of teacher rights and responsibilities for students to protect them from arbitrary teacher-pupil control was supported by about two thirds of the respondents. An overwhelming majority of the respondents also agreed that a "teacher should take into account the ability of the child(ren) to understand that a given act is willful and disruptive to the class."

Situation #5: Punishment Such as Writing Lines. About two thirds of the respondents disagreed that reasonable action or decision on the part of the teacher or principal can be legislated as part of the School Act. In contrast to the trustees, none of whom agreed with the statement, 55 per cent of the teachers agreed. During the interview sessions, teachers indicated a need for greater guidance on how to resolve conflicts. Trustees indicated that attempting to legislate reasonableness was like trying to legislate morality.

Your Personal Responses. In principle, the respondents supported both allowing students the opportunity to explain their actions as well as allowing parents to appeal decisions or actions affecting their children. Most respondents supported the statement that school files be restricted to designated professionals and parents.

CHAPTER 5

Perceptions on the Search and Seizure Aspects of Pupil Control

The purpose of this chapter is to report the analysis of the data gathered concerning search and seizure aspects of pupil control. This is a further investigation sub-problem one which addresses the question:

> What are the perceptions of school authorities concerning "Legal Rights" of pupils in the school in the context of the Charter?

Respondent perceptions were gathered on search of student lockers or other similar areas and seizure of articles or materials. Section 8 and commentaries on this section of the Charter were used as a guide in developing Situations 2 and 3 and some of the accompanying statements. Section 8 reads as follows:

> Everyone has the right to be secure against unreasonable search or seizure.

The respondents were given a series of situations, followed by statements dealing with each situation within the context of search and seizure relative to the Charter. However, neither the Charter nor terms associated with it were mentioned in the situation or in the statements. The respondents were asked whether they agreed or disagreed with the statement. Some respondents also chose to add comments; these are reported separately after the report on each situation.

The analyses of the data for the seven statements of Situation 2 and two statements of Situation 3 are reported, respectively, in Tables 8 and 9.

Situation #2: Lockers

The respondents were asked whether they agreed or disagreed with seven statements about the search of lockers and the seizure of articles found in the lockers. Their answers were to be guided by the following situation:

> The school administrator is concerned that certain students are hiding liquor or drugs in their lockers for purposes of bootlegging or selling.

Search and Seizure. The statement "School administrators should have the authority to search lockers and/or seize articles only if reasonable suspicion exists" (item 14, Table 8) was supported by 88.4 per cent of the respondents.

Nearly two-thirds of the respondents opposed the establishment of regulations by the Department of Education to protect students "against unreasonable search of self and/or locker and seizure of student possessions by school personnel" (item 16).

About 70 per cent disagreed that "police officers should have the right to search and seize articles without the permission of a teacher, principal or other school authority" (item 17). In other words, while respondents seemed to

Table 8
Perceptions on Lockers Concerning Search and Seizure in Situation #2

Situation #2

The school administrator is concerned that certain students are hiding liquor or drugs in their lockers for purposes of bootlegging or selling.

Questionnaire Statements	% Agree	% Disagree
Search and Seizure		
14. School administrators should have the authority to search lockers and/or seize articles only if reasonable suspicion exists.	88.4	11.6
16. The Department of Education should establish regulations that protect the student against unreasonable search of self and/or locker and seizure of student possessions by school personnel.	38.2	61.8
17. Police officers should have the right to search and seize articles without the permission of a teacher, principal or other school authority.	30.5	69.5

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
44.1%	16.5%	44.4%	30.4%	45.5%

Questionnaire Statements	% Agree	% Disagree
Search of Lockers		
13. Students should have privacy rights against any form of locker inspection at the senior high school level.	03.0	97.0
18. Students should be required to open their lockers at the request of a school teacher or the school principal.	94.5	05.5
19. The school should have the authority to search a student's locker even if lockers were deemed to be private property by the courts.	66.5	33.5

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
73.3%	73.3%	37.5%	52.2%	54.6%

Questionnaire Statements	% Agree	% Disagree
20. Students should be protected against any search by the school even if lockers were deemed to be school property by the courts.	08.1	91.9

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* The percentages for sub-groups are provided only where the differences are significant.

believe that students should not have privacy rights within the school; they also would oppose external authorities having the same rights in controlling students as those exercised by school authorities. Specifically, 44.1 per cent of the teachers, 44.4 per cent of the superintendents and 45.9 per cent of the trustees, as compared with 16.5 per cent of the principals, agreed that the police should have the right to search and seize articles of students without the school's permission.

Search of Lockers. The "privacy rights against any form of locker inspection at the senior high school level" (item 13) was opposed by 97.0 per cent of the respondents. Furthermore, 94.5 per cent of the respondents also agreed that "students should be required to open their lockers at the request of a school teacher or the school principal" (item 18).

According to 66.5 per cent of the respondents, the school should have the right to search lockers "even if the lockers were deemed to be private property by the courts" (item 19). Teachers and principals differed significantly from superintendents. As Table 8 shows, 37.5 per cent of the superintendents, as contrasted to 73.3 per cent of the teachers and 73.3 per cent of principals, agreed to the right of search.

"Even if lockers were deemed to be school property by the courts" (item 20), 91.9 per cent of the respondents opposed any student protection against a search by the school.

Written Comments of the Respondents

Twelve respondents added comments to some of the statements of Situation 2. For example, a respondent added to the statement dealing with privacy rights (item 13), that "the locker is school property."

"Might be difficult to define reasonable" was written after the statement dealing with authority to search and seize articles (item 14). Other respondents wrote that the Charter as well as the laws under the Criminal Code already exist to protect students against unreasonable search of self and/or locker and seizure (item 16). Others added that the opening of lockers (item 18) should be governed by board policy because lockers were board property. As to lockers "deemed to be private property by the courts" (item 19), one respondent added "perhaps should, [have the right to search] but defying a court order would be an indictable offence." Similar comments were also written by other respondents.

As to the statement dealing with search and seizure (item 20), comments indicated agreement that search and seizure decisions occur within the law, but some of the 12 respondents indicated concern that the law could be favouring the individual too much at the expense of the collective rights of the other students.

Personal Interviews

Two statements dealing with lockers were discussed during the interview.

Search and Seizure. During the interviews, three respondents agreed that "police officers should have the right to search and seize articles without the permission of a teacher, principal or other school authority" (item 17) and suggested that the law applied to students in the same way as it applied to adults. According to a Department of Education respondent, "we are subject to the law; so are they." These respondents believed that it was proper for educators to have the discretionary right to protect a student's right to privacy as long as such protection did not impinge upon the rights and safety of the other students.

However, most of the respondents disagreed. Teachers and principals suggested their right to discretionary action in dealing with their students should be protected; they were much less supportive of the police having that same right. According to a superintendent, such a police right "taken to the extreme can lead to a police state." Furthermore, all the principals were emphatic that such search and seizure should occur only with the permission of the principal. The school, according to a principal, must "retain certain rights." The police should work within the law or at least the spirit of the law. Search and seizure actions by police authorities could harm students. An association respondent was "horrified by what is happening in our judicial procedures which permits police infringement of privacy rights."

Search of Lockers. Most of the respondents agreed that "the school should have the authority to search a student's locker even if lockers were deemed to be private property by the courts" (item 19). According to two-thirds of the respondents, the safety of the students is paramount. Lockers are to be used to store items essential to schooling. If reasonable suspicion exists that contraband articles may be stored in the locker, than the locker should be searched. In other words, the collective rights of the students should supersede the rights of the individual in certain cases. Most of the respondents held that common sense would dictate whether or not they would decide to search the lockers. One of the superintendents suggested that there is a moral principle that should be followed; namely that "a right is only thus if it admits to exceptions."

Four of the respondents disagreed with item 19. According to an association respondent,

> you can't do that to students. You have to follow "procedures in law." If courts say that lockers are private property then such property has to be respected. Admittedly, such action by the courts would cause a problem in the school, but that's it.

Differences of opinion between the superintendents and the teachers and principals were indicated in the questionnaire return. However, these differences of opinion were not evident during the interviews.

Situation #3: Police Search and Seizure

The respondents were asked to react to two statements dealing with police search of lockers and seizure of student contents. The two statements were to be answered with reference to the following situation:

> Two police constables come to the school to question a few students concerning alleged criminal activities. During the questioning, the police request that the students' lockers be searched. The principal complies and has the students open their lockers.

Police Search and Seizure. According to 90.5 per cent of the respondents, "the police should have the right to search student lockers in the presence of the principal or a designate" (item 26, Table 9).

At the same time, 93.5 per cent of the respondents agreed that "school boards should establish regulations to guide the principal whenever the police request locker search and possible seizure of contents" (item 28).

Written Comments of the Respondents.

Five respondents added conditions to the statement concerning police search of student lockers in the presence of a school authority. According to these, police search of student lockers could occur if the police had a search warrant or if there were reasonable belief that illegal materials, for purposes of illegal activities, might be stored in the lockers.

Personal Interviews

The two statements were not reviewed during the interview sessions because of general agreement in the questionnaire.

Table 9
Perceptions on Police Search of Student Lockers Dealing with Search and Seizure in Situation #3

Situation #3

Two police constables come to the school to question a few students concerning alleged criminal activities. During the questioning, the police request that the students' lockers be searched. The principal complies and has the students open their lockers.

	Questionnaire Statements	% Agree	% Disagree
26.	The police should have the right to search student lockers in the presence of the principal or a designate.	90.5	09.5
28.	School boards should establish regulations to guide the principal whenever the police request locker search and possible seizure of contents.	93.5	06.5

Summary

Situation #2: Lockers - Search and Seizure. Most respondents agreed that school administrators should have the authority to search lockers and/or seize articles only if reasonable suspicion exists. Of the respondents, 61.8 per cent disagreed that there should be regulations to protect students against unreasonable search and seizure. Furthermore, about two-thirds of the respondents disagreed that the police should have the right to search lockers and seize articles with or without the school's permission. Some significant differences of opinion between the principals and the teachers, superintendents and trustees indicated that principals objected most to police search and seizure actions without permission.

About two-thirds of the respondents agreed that the school should have the right to search a student's locker. Moreover, according to the respondents interviewed, the collective right of the students was more important than the issue of lockers being private property. With the exception of teachers and principals, respondents stated that they would respect such a court ruling even though it might cause problems for the schools.

However, one-third of the interviewees disagreed with the statement because such authority could harm student-staff rapport as well as interfere with the school's obligation to protect the student's right to an education.

Situation #3: Police Search and Seizure. The respondents strongly supported the statements giving the police the right to search student lockers and asking school boards to establish regulations to guide the school in such police search and seizure of articles.

CHAPTER 6

Perceptions on the Cruel and Unusual Treatment or Punishment Aspects of Pupil Control

The purpose of this chapter is to report the analysis of the data gathered on the cruel and unusual treatment or punishment aspects of pupil control. This is a further investigation of sub-problem one which addresses the question:

> What are the perceptions of school authorities concerning "Legal Rights" of pupils in the school in the context of the Charter?

Perceptions were gathered on pupil punishment. Section 12 and commentaries on section 12 of the Charter were used as a guided in the development of Situations 4 und 5 and their accompanying statements and some of the statements in "Your Personal Responses: Part Two." Section 12 reads as follows:

> Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

The respondents were given a series of situations, followed by statements dealing with each situation. However, neither the Charter nor terms associated with it were mentioned in the situation or in the statements. The respondents were asked whether they agreed or disagreed with the statement. Some respondents also chose to add comments; these are reported separately after the report on each situation.

The analysis of the data for the four statements of

Situation 4, the five statements of Situation 5 and the one statement in "Your Personal Responses" is reported, respectively, in Tables 10, 11 and 12.

Situation #4: Punishment as a Deterrent

The respondents were asked whether they agreed or disagreed with four statements about using punishment as a means of pupil control. Agreement or disagreement with the statements was to be guided by the following situation:

> In response to the actions of a few students, a whole class is punished for their lack of deportment.

"Giving detentions to a whole class is a justifiable means of punishment" (item 29, Table 10) was opposed by 89.4 per cent of the respondents. Of all respondents, 73.0 per cent disagreed that "the application of any form of punishment as a deterrent or method of student control is an acceptable practice" (item 30). However, 81.8 per cent disagreed that the "School Act of Alberta should prohibit all forms of corporal punishment in the school" (item 31). In other words, most respondents opposed the application of any form of punishment as a deterrent of student control at the same time that they opposed an amendment to the School Act of Alberta that would prohibit all forms of corporal punishment in the school. However, there were differences of opinion between the Department of Education respondents and the other respondents. Whereas 18.2 per cent of all the respondents favoured the removal by law of corporal punishment as a means of pupil control, 45.8 per cent of the Department of Education respondents favoured such an action by the government. Only 12.9 per cent of the principals (11 of the 74), 11.8 per cent of the superintendents (2 of the 17), 16.7 per cent of teachers (10 of the 60), and 18.2 per cent of the trustees (2 of the 11) favoured legislative action.

Table 10
Perceptions on Pupil Controls with Significant Differences of Opinion Among the Respondents in Situation #4 Relative to Unusual Treatment or Punishment

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Situation #4

In response to the actions of a few students, a whole class is punished for their lack of deportment.

Questionnaire Statements	% Agree	% Disagree
Punishment		
29. Giving detentions to a whole class in order to control specific individuals is a justifiable means of punishment.	10.6	89.4
30. As a general principle, the application of any form of punishment as a deterrent or method of student control is an acceptable practice.	27.0	73.0
31. The School Act of Alberta should prohibit all forms of corporal punishment in the school.	18.2	81.8
Percentage of each group that responded with "Agree" Teachers 16.7% Principals 12.9% Superintendents 11.8% Dept.Ed. 45.8% Trustees 18.2%		
32. A "Code of Student Rights and Responsibilities" should be included in the School Act.	71.4	28.6
Percentage of each group that responded with "Agree" Teachers 75.0% Principals 71.1% Superintendents 41.2% Dept.Ed. 87.5% Trustees 72.7%		

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* The percentages for sub-groups are provided only where the differences are significant.

About 70 per cent of the respondents agreed that "a code of student rights and responsibilities should be included in the School Act" (item 32). However, only 41.2 per cent of the superintendents favoured the inclusion of a "code" in the School Act as compared with 87.5 per cent of the Department of Education respondents. As is further detailed in Table 10, 75.0 per cent of the teachers, 72.7 per cent of the trustees and 71.1 per cent of the principals agreed with the statement. There was a significant difference of opinion in the responses between the superintendents and the other respondent groups.

Written Comments of the Respondents

Five respondents added comments or underlined words or phrases to qualify their answers. For example, some respondents underlined the phrase "the application of any form of punishment," or the word "any" (item 30) to indicate why they agreed or disagreed. Another respondent circled the word "any" with an arrow pointing to "Disagree," substituted the word "some" and circled "Agreed."

Relative to prohibiting corporal punishment in school (item 31), one respondent added the phrase "No way!!" but then circled "Agree." The phrase "no way" would seem to indicate opposition to the statement and not agreement.

Personal Interviews

The two statements dealing with corporal punishment and a code of student rights and responsibilities were discussed during the interview.

Four of the interviewed respondents stated that corporal punishment (item 31) should be prohibited because such methods are too prone to abuse and are not necessary in today's society. One principal's statement,--"I don't feel I have that right as a parent, and some kids are abused at home--they get enough"--generally reflected the perceptions of the other respondents on the use of corporal punishment.

Two-thirds of the interviewees disagreed with item 31 because they wanted to preserve the status quo. They believed that the School Act should allow for local discretionary powers. In general, the issue was not the use of corporal punishment as much as the option to use corporal punishment when it was deemed to be a last resort or a method to force the issue.

The four respondents who agreed with item 31 also argued that a code could help delimit the rights and responsibilities of students (item 32), thereby removing possible areas of abuse. One of the respondents added that the emphasis should be on responsibilities of students. Another added that, while he agreed with the concept, there had to be some judicious caution exercised in deciding what had to be included in the code.

However, two-thirds of the respondents were opposed to a code because it would remove the flexibility that was essential to operate a school. One of the association respondents commented on the value of the present state of school governance, in which the locally determined expectations on corporal punishment and a code of student rights and responsibilities of the community and school(s) are identified and respected by the school jurisdiction.

Situation #5: Student Punishment

The respondents were asked whether they agreed or disagreed with five statements about student punishment. They were to be guided by the following situation:

> In response to a classroom situation, a teacher imposes a punishment, such as the writing of a massive number of lines and/or a large number of detention periods.

Right to Determine Behaviour Control. "The right to determine the manner of student behaviour control" (item 35, Table 11) was favoured by 72 per cent of the respondents. As the table shows, 93.2 per cent of the teachers supported the teachers' right to determine student behaviour control, as compared with 54.2 per cent of the Department of Education respondents, 58.8 per cent of the superintendents and 64.2 per cent of the principals. On the basis of age, 89.9 per cent of those educators or trustees with less than five years of experience agreed that teachers should have the right to determine the manner of student behaviour control, whereas 62.3 per cent of those educators or trustees with 21 or more years of experience agreed. This was the first questionnaire statement for which differences among respondent groups based on years of experience were significant.

Table 11
Perceptions on Student Punishment with some Significant Differences Among the Respondents Either by Years of Experience or by Group Relative to Situation #5

Situation #5

In response to a classroom situation, a teacher imposes a punishment, such as the writing of a massive number of lines and/or a large number of detention periods.

Questionnaire Statements	% Agree	% Disagree
Right to Determine Behaviour Control		
35. The teacher should have the right of determining the manner of student behaviour control.	72.0	28.0

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
93.2%	64.2%	58.8%	54.2%	72.7%

Percentage of each 'experience group' that responded with "Agree"

0 - 5 yrs.	6 - 10 yrs.	11 - 20 yrs.	21 or more yrs.
89.9%	80.6%	74.6%	62.3%
Percentage of total number of respondents			
9.3%	16.1%	34.7%	39.9%

Questionnaire Statements	% Agree	% Disagree
Sarcasm		
37. Other forms of punishment such as subjecting a student to the ridicule of his/her classmates or sarcasm can be justified.	03.5	96.5

Percentage of each 'experience group' that responded with "Agree"

0 - 5 yrs.	6 - 10 yrs.	11 - 20 yrs.	21 or more yrs.
05.0%	12.9%	02.9%	0.0%
Percentage of the total number of respondents			
10.1%	15.7%	34.8%	39.4%

Table 11 (continued)
Perceptions on Student Punishment with some Significant Differences Among the School Authorities Either by Years of Experience or by Group Relative to Situation #5

Questionnaire Statements	% Agree	% Disagree
Arbitrariness		
38. Arbitrariness in student behaviour control practices by a teacher or principal can be justified.	42.3	57.7

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
57.9%	38.8%	23.5%	29.2%	50.0%

Questionnaire Statements	% Agree	% Disagree
39. Punishment that is excessive in one circumstance may be acceptable in another circumstance.	78.5	21.5

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
88.3%	79.5%	82.4%	58.3%	60.5%

Questionnaire Statements	% Agree	% Disagree
Corporal Punishment		
40. The use of corporal punishment can be justified.	78.7	20.3

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
81.7%	85.7%	88.2%	54.2%	72.0%

* The percentages for sub-groups are provided only where the differences are significant.

Sarcasm. Sarcasm as a justifiable form of punishment (item 37) was opposed by 96.5 per cent of the respondents.

As Table 11 shows, 12.9 per cent of respondents with six to ten years of experience (4 of the 31) agreed with the statement. However, the respondents with 21 or more years of experience, who represent 39.4 per cent of the total, unanimously disagreed with the statement. Of the 69 respondents with 11 to 20 years of experience, only 2 agreed with the statement and of those with six to ten years of experience, four of the 31 respondents agreed. In other words, few of the respondents agreed that sarcasm as a form of punishment is justifiable.

Arbitrariness. The statement that "Arbitrariness in student behaviour control practices by a teacher or principal can be justified" (item 38) was opposed by 57.7 per cent of the respondents. Of all respondents, 57.9 per cent of the teachers and 50.0 per cent of the trustees agreed, whereas only 38.8 per cent of the principals, 23.5 per cent of the superintendents and 29.2 per cent of the Department of Education respondents agreed with the statement. Significant differences of opinion occurred between the teachers and the principals, superintendents and Department of Education respondents.

Of all respondents, 78.5 per cent agreed that "punishment that is excessive in one circumstance may be acceptable in another circumstance" (item 39). Moreover, 88.3 per cent of the teachers, 82.4 per cent of the superintendents and 79.5 per cent of the principals supported the statement. Only 58.3 per cent of the Department of Education respondents and 60.5 per cent of the trustees agreed. The opinions of teachers, principals and superintendents differed significantly from those of the Department of Education respondents and trustees.

Corporal Punishment. "The use of corporal punishment can be justified" (item 40) was favoured by 78.7 per cent of the respondents. However, as detailed in the table, 88.2 per cent of the superintendents supported the statement in contrast to 54.2 per cent of the Department of Education respondents. Moreover, a significant difference of opinion occurred between the teachers, principals, and superintendents and the Department of Education respondents and trustees.

Written Comments of the Respondents

Ten of the respondents added comments to some of the statements. With respect to teachers having the right to determine "the manner of student behaviour control" (item 35), extra words or phrases were added to the statement indicating that such rights had to be exercised within reasonable limits.

With reference to item 38 ("arbitrariness in student behaviour control practices by a teacher or principal can be justified") and item 39 ("punishment that is excessive in one circumstance may be acceptable in another"), the respondents were concerned with the terms "arbitrariness" and/or "excessive." For example, one respondent added a comment regarding arbitrariness, namely that "if you mean caprice--Disagree; if you mean discretion (choosing a suitable deterrent) -- Agree." Another respondent wrote, "Can one choose arbitrarily from a list of suitable forms?", whereas another respondent justified severe punishment "under extenuating (or mitigating) circumstances."

Personal Interviews

Situation 5 and five related statements were discussed during the interview. Because there were significant differences of opinion based on years of experience for two of the statements, the respondents were asked how many years of experience they had as educator or trustee. This question was pursued only with the statements dealing with teacher rights to determine the manner of student behaviour control and forms of punishment such as ridicule or sarcasm.

Right to Determine Behaviour Control. Most of the teachers agreed that they should have "the right of determining the manner of student behaviour control" (item 35). The Department of Education respondent stated that it was "expected of teachers to determine student behavior control." Furthermore, according to this respondent, "if the manner of pupil control is not consistent with local expectations, where is the principal?" One of the association respondents added that teachers were responsible for controlling their classes within the guidelines of the school, and that control is "not simply left to their fancy."

Eight of the respondents disagreed with the statement because they were concerned that abuses would occur. Most of these respondents were principals or superintendents. They preferred preventing abuse by having the right to determine pupil control within the context of school policy. A principal stated that teachers had the right to provide input in policy development, but not the right to determine exclusively the manner of behaviour control.

Sarcasm. Without exception, all the respondents interviewed stated unequivocally that "other forms of punishment such as subjecting a student to ridicule... or sarcasm" (item 37) can never be justified. According to a principal, teachers "who practice such abuse live on an island." In disagreeing with the statement, other respondents added comments such as "any teacher who has kids knows kids don't like to be ridiculed," and "no way; I don't want that for my children."

Arbitrariness. All the respondents disagreed that "arbitrariness in student behaviour control practices by a teacher can be justified" (item 38). A superintendent stated that "this is the kind of thing that has to be addressed in the School Act." A teacher argued that such action "can be explained but never justified." When asked about arbitrariness, an association respondent, asked, "are we talking about the limit of tolerance of our society?" The other respondents who disagreed made similar statements.

Eight of the 19 interviewed respondents disagreed that "punishment that is excessive in one circumstance may be acceptable in another circumstance" (item 39). Such phrases as "circumstances," "context" and "need" were used to explain why they disagreed. Furthermore, one association respondent added that "if excessive for whatever reason then that punishment can never be justified."

With his/her comment, "No two kids are the same", one principal captured the feelings of the eight others who agreed with the statement.

Corporal Punishment. Three quarters of the respondents agreed that the "use of corporal punishment can be justified" (item 40). However, a teacher added the following: "I agree, but, I don't like it as a blanket statement. I don't want it removed unless there are other avenues instead." The other respondents also qualified their answers to the statement in a similar manner.

However, senior high school principals, superintendents, the Department of Education respondent and one of the association respondents stated that such action is arbitrary and seldom has long lasting effects. A principal stated that "in high school it [corporal punishment] is never administered to students."

Your Personal Responses: Part Two

The respondents were asked their opinions on whether "teachers and school principals should have the right to use whatever measures are necessary to control student actions and/or decisions" (item 76, Table 12). According to 53.8 per cent of the respondents, teachers and principals should not have that right. Principals and teachers disagreed with the Department of Education respondents, trustees and superintendents. Of the groups, 54.2 per cent of teachers as compared with 13.0 per cent of the Department of Education respondents (3 of the 20) agreed.

Table 12
Personal Responses as Well as Significant Differences Among the Groups Concerning Unusual Treatment or Punishment

	Questionnaire Statement	% Agree	% Disagree
76.	Teachers and school principals should have the right to use whatever measures are necessary to control student actions and/or decisions.	46.2	53.8

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
54.2%	53.6%	35.3%	13.0%	27.3%

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* The percentages for sub-groups are provided only where the differences are significant.

Written Comments of the Respondents

Seven respondents added comments to the statement dealing with educators having "the right to use whatever measures necessary to control student actions and/or decisions" (item 76). For example, one respondent insisted that any measures "be legitimate." Another respondent added that such measures should be "within reason." Another respondent underlined "that measures are necessary." These respondents entered their own provisos for agreement with the statement.

Personal Interviews

Two of the respondents agreed that "teachers and school principals should have the right . . . to control student actions and/or decisions" (item 76). A trustee suggested that "right and responsibility go hand in hand." The other respondent, a principal, suggested that if "unreasonable measures occur, then the teacher suffers the consequences."

A teacher strongly disagreed and commented that it "sounds like a Fascist regime whereby I have the power to override you [the student] -- not a healthy situation." One principal stated that there were moments when "we are frustrated and wish we had the absolute power." However, most of the respondents generally responded that the statement was too broad and open to abuse.

Summary

Situation #4: Punishment as a Deterrent. Most respondents would not allow teachers to give the whole class detentions and/or allow teachers to use any form of punishment as a deterrent. Most respondents also opposed the abolition of corporal punishment and favoured a code of student rights. A minority of interviewed respondents, who wanted corporal punishment prohibited, argued that it was too prone to abuse and that a code of student rights and responsibilities might be a way of resolving the question. The majority suggested that such punishment should be kept as a discretionary power; otherwise all flexibility would be removed. They opposed a code of student rights.

Situation #5: Student Punishment. Most of the respondents agreed that the teacher should have the right to determine the manner of student behaviour control. Teachers and trustees were the most supportive. Interestingly, 89.9 per cent with five years of experience or less as compared with 62.3 per cent of the respondents with 21 or more years experience supported the teacher's having this right.

Sarcasm as a punishment was overwhelmingly disapproved by the respondents. However, four of the respondents with six to ten years of experience disapproved of such forms of deterrent. The interviewed respondents unanimously disapproved of the use of sarcasm as an acceptable method of deterrent.

A majority of the respondents disagreed that "arbitrariness in student behaviour control practices . . . can be justified." About three-quarters of the respondents agreed that "punishment that is excessive in one circumstance may be acceptable in another circumstance." Moreover, about three-quarters agreed that corporal punishment could also be justified as a deterrent. Teachers and superintendents were consistently more supportive of both statements than were the other respondents. During the interviews, the majority of respondents did not agree that "arbitrariness . . . can be justified," nor that corporal punishment is justifiable.

Your Personal Responses: Part Two. About 54 per cent of the respondents disagreed with the statement that "teachers and school authorities should have the right to use whatever measures are necessary to control student actions and/or decisions." During the interviews, most of the respondents also disagreed with the statement.

CHAPTER 7

Perceptions Concerning Equality Rights of Students

This chapter addresses sub-problem two:

> What are the perceptions of school authorities concerning "Equality Rights" of pupils in the context of the Charter?

Information was gathered on respondents' perceptions of the concept of equality rights for students as it relates to section 15 of the Charter. Section 15 reads as follows:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
>
> Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

For purposes of development, analysis and reporting, the situations and statements were identified with section 15 of the Charter. Section 15 and preliminary commentaries on section 15 were used as a guide. Some of the statements in "Your Personal Responses: Part Two" were also guided by section 15.

The respondents were given a series of situations, followed by statements dealing with each situation within the context of "Equality Rights" relative to the Charter. However, neither the Charter nor terms associated with it were mentioned in the situation nor in the statements. The respondents were asked whether they agreed or disagreed with the statement. Some respondents also chose to add comments; these are reported separately after the report on each situation.

The analyses of the data for the ten statements of Situation 6, the seven statements of Situation 7, the three statements of Situation 8, the two statements of Situation 9, and the seven statements of "Your Personal Responses" are reported, respectively, in Tables 13 to 16.

Situation #6: Equal Access to an Education

The respondents were asked to indicate agreement or disagreement with 10 statements. Four statements dealt with general principles of equality, three with affirmative action and the remaining three with special education. Their responses were guided by the following situation:

> A learning disabled child's parents want their child
> to be admitted into a regular classroom.

General Principles of Equality. About three quarters of the respondents favoured "all students, without any exception, have[ing] the right to publicly funded schooling" (item41, Table 13). This majority varied among the groups according to their years of experience as educators or trustees. Table 13 shows 83.9 per cent of the respondents with six to ten years of experience favouring the principle. Of the respondents with less than five years experience, 50.0 per

Table 13
Perceptions on the Right to Equal Access to an Education and Some Significant Differences of Opinion Among the Respondents Either by Years of Experience or by Group Relative to Situation #6

Situation #6

A learning disabled child's parents want their child to be admitted into a regular classroom.

Questionnaire Statements	% Agree	% Disagree
General Principles of Equality		
41. All students, without any exception, have the right to publicly funded schooling.	73.1	26.9

Percentage of each 'experience group' that responded with "Agree"

0 - 5 yrs.	6 - 10 yrs.	11 - 20 yrs.	21 or more yrs.
50.0%	83.9%	76.8%	71.4%
Percentage of total number of respondents			
10.2%	15.7%	35.0%	39.1%

Questionnaire Statements	% Agree	% Disagree
42. School administrators should have the right to refuse parental request for their learning disabled child's entry into regular programs.	65.8	34.2
46. There should be a full range of alternative education placements in appropriate education settings for all students.	92.3	07.7
50. It is the province's responsibility to ensure that there is equality of access to an education for the disabled and the nondisabled.	95.9	04.1
Affirmative Action		
43. I believe that "Affirmative Action" programs in education discriminate against other students.	40.6	59.4
47. The Department of Education should establish regulations that define the right of students to equal opportunity in schooling.	85.2	14.8

Table 13 (continued)
Perceptions on the Right to Equal Access to an Education and Some Significant Differences of Opinion Among the Respondents Either by Years of Experience or by Group Relative to Situation #6

Questionnaire Statements	% Agree	% Disagree
48. The School Act of Alberta should define "Affirmative Action" requirements.	73.5	26.5

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
82.1%	80.0%	46.7%	54.2%	60.0%

Special Education

Questionnaire Statements	% Agree	% Disagree
44. If there is no special education class, a learning disabled student should be placed into a regular classroom.	51.8	48.2
45. To place a disadvantaged child into a regular classroom, without thorough review of the child's capability, can be harmful.	94.5	05.5
49. There should be a section in the School Act of Alberta establishing procedures for selecting or denying student entrance into special education classes.	60.7	39.3

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
67.8%	64.3%	29.4%	54.2%	63.6%

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* The percentages of sub-groups are provided only where the differences are significant.

cent agreed with the statement. The right of administrators to refuse parental requests to have learning disabled children enrolled in a regular program (item 42) was favoured by 65.8 per cent of the respondents. The offering of a "full range of alternative education placements in appropriate education settings for all students" (item 46) was supported by 92.3 per cent of the respondents. Furthermore, 95.9 per cent approved in principle the province "ensur[ing] that there be equality of access to an education for the disabled and the nondisabled" (item 50).

Affirmative Action. The statement "Affirmative Action programs in education discriminate against other students" (item 43) was not supported by 59.4 per cent of the respondents. Of the respondents, 85.2 per cent wanted the Department of Education to establish "regulations that define the right of students to equal opportunity in schooling" (item 47). Moreover, 73.5 per cent of the respondents also agreed that the "School Act of Alberta should define Affirmative Action requirements" (item 48). Specifically, 80 per cent of the principals, 82.1 per cent of the teachers and 60.0 per cent of the trustees, as compared with 46.7 per cent of the superintendents and 54.2 per cent of the Department of Education respondents, agreed; this difference was statistically significant.

It should also be noted that the term "affirmative action" caused problems for the respondents. Some of the respondents placed a question mark next to the phrase.

Special Education. The statement "if there were no special education classes, a learning disabled student should be placed in a regular classroom" (item 44) was supported by 51.8 per cent of the respondents. However, the statement "to place a disadvantaged student into a regular classroom without a thorough review of the child's capability can be harmful" (item 45) was supported by 94.5 per cent of the respondents. Furthermore, 60.7 per cent of the respondents agreed the School Act should specify procedures for "selecting or denying student entrance into special education classes" (item 49). Table 13 shows that 29.4 per cent of the superintendents favoured the idea that the School Act regulate entry and denial of entry into special classes. The difference of opinion between the superintendent and the other groups was significant, with 64.3 per cent of the principals, 67.8 per cent of the teachers, 63.6 per cent of the trustees, and 54.2 per cent of the Department of Education respondents favouring the idea.

Written Comments of the Respondents.

Twelve respondents added comments. As to the student having the right to publicly funded schooling (item 41), one of the respondents added "providing it does not hamper the learning of the other students." Some respondents were concerned with the school administrators having the right to refuse parental request their disabled child be admitted to regular classes (item 42). According to these respondents, the right to refuse the entry of a student had to be based on the availability of expert instruction, class size, availability of suitable programs or the degree of disability. With respect to the placement of a disabled child in a regular class when special education classes are not available, one of the respondents commented that the other students also had a right to some of the teacher's time; assuming that a disabled child would occupy much of the teacher's time and effort unless a teacher's aide assisted.

The phrase "affirmative action" seemed to have been misunderstood or misinterpreted by about eight per cent of the respondents who added a question mark or comment after the statement.

Personal Interviews

Three statements on equality rights of students were discussed.

General Principles of Equality. One respondent disagreed that "all students, without any exception, have the right to publicly funded schooling" (item 41). A teaching assistant principal agreed in principle but disagreed in practice because schools are not always properly built.

However, the remaining respondents who agreed with the statement, answered in the affirmative with a qualifier. A superintendent commented that "everybody has the right; the way to respond to that right will vary." A principal stated that it is a difficult issue and that "each situation has different implications."

The difference of opinion that surfaced in the questionnaire among the groups, based on years of experience, was not apparent among the interviewed respondents.

Affirmative Action. During the interview, the respondents asked that the researcher define the term "affirmative Action" (item 48). A principal suggested that "being in the same class as everyone else doesn't mean affirmative action for that child." Another principal stated "I agree with the idea, but I am not convinced" and a teacher argued that "as long as the 'average kid' doesn't suffer because the teacher is drained; a balance has to be maintained." A trustee stated that "affirmative action is tokenism and that tokenism doesn't work. The best way is to provide the tools to access the mainstream and down the way this will bring about equality." Similar statements were made by superintendents and the Department of Education respondent.

Special Education. An equal number of respondents agreed or disagreed that "establishing procedures for selecting or denying student entrance into special education classes" (item 49) should be in the School Act.

Those who agreed did so with some reservation. One teacher stated that the establishment of procedures was becoming essential "because of the courts." Another teacher stated that the selection or denial of students for special classes would be "hopefully in consultation with school boards, parents and Department of Education personnel and the parents." The remaining respondents suggested that they favoured the idea of having procedures for selecting or denying student entrance into special education classes only if it allowed better access to the programs and not the reverse.

Those who disagreed with item 49 did not want such regulations in the School Act. All indicated that it should not be in the School Act because policies and regulations at the local level would allow for more flexibility.

Situation #7: Student Inability to Conform

The respondents were asked to react to seven statements. Three of the statements dealt with the refusal of entry or continuance in a regular classroom and four statements dealt with selection of students. The respondents were guided by the following situation:

> A child is said to be lazy, and is an attendance problem. The child is, therefore, referred to a special education classroom on the basis that he/she is unable to follow the regular curriculum. The decision is based solely on his/her inability to conform to the norms of a regular classroom.

Refusal of Entry and/or Continuance. The statement "students who do not want to work in class should be deprived of the privilege of being retained in a regular classroom" (item 51, Table 14) was opposed by 57.5 per cent of the respondents. Even though a breakdown by group is not noted in the table, it is noteworthy that 57.6 per cent of the teachers agreed whereas the other four groups were in the 30 per cent range of agreement.

About 92 per cent of the respondents agreed that "there should be an appeal procedure for students and parents against any decisions of the school and/or the school system .

Table 14
Perceptions Dealing with Equality of Access to Schooling Opportunities and Significant Differences of Opinion Among the Groups Relative to Situation #7

Situation #7

A child is said to be lazy, and is an attendance problem. The child is, therefore, referred to a special education classroom on the basis that he/she is unable to follow the regular curriculum. The decision is based solely on his/her inability to conform to the norms of a regular classroom.

	Questionnaire Statements	% Agree	% Disagree
	Refusal of Entry and/or Continuance		
51.	Students who do not want to work in class should be deprived of the privilege of being retained in a regular classroom.	42.5	57.5
56.	There should be an appeal procedure for students and parents against any decisions of the school and/or the school system which deny equal opportunity to an education to students who do not conform to the norms of the classroom.	92.3	07.7
57.	Schools should be able to refuse the entry of medically, physically or emotionally handicapped students when they may not able to conform to the norms of classroom practices.	68.6	31.4

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
69.0%	75.6%	37.5%	56.5%	90.9%

	Selection		
52.	Boys implicitly suffer discrimination in special education selection practices.	14.9	85.1
53.	Teachers should provide equal opportunity for all students in their classroom.	94.9	05.1
54.	Selection procedures should be related to the purpose of special classes.	99.0	01.0
55.	Selection procedures should specify mandatory parental involvement in the placement of learning disabled student(s).	85.9	14.1

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* The percentages for sub-groups are provided only where the differences are significant

. . [regarding] students who do not conform to the norms of the classroom" (item 56). Furthermore, 68.6 per cent of the respondents stated that students who are medically, physically or emotionally handicapped and "not able to conform to the norms of classroom practices" (item 57) should be refused entry. Most trustees (90.9%) and a majority of the principals (75.6%), the teachers (69.0%), and the Department of Education respondents (56.9%) indicated agreement. Only 37.5 per cent of the superintendents indicated agreement. The difference of opinion between the superintendents and the other groups was significant.

Selection. Most of the respondents (85.1%) disagreed that "boys implicitly suffer discrimination in special education selection practices" (item 52). That "teachers should provide equal opportunity for all students in their classroom" (item 53) was supported by 94.9 per cent of the respondents. As to selection procedures relating to the purpose of special education (item 54) and specifying mandatory parental involvement (item 55), 99.0 per cent and 85.9 per cent, respectively, approved.

Written Comments of the Respondents

Eight respondents wrote extra comments. Two of the respondents commented on the statement that laggard students "should be deprived of the privilege of being retained in a regular classroom" (item 51). Both respondents suggested that the age of the student had to be considered before withdrawing a student, who does not want to work, from a regular classroom. Another respondent wrote that some students "learn a great deal without working." As to boys being discriminated against in the special education selection practices (item 52), two respondents wrote that "there was some truth in the statement" and that it "occurred in many elementary regular classes, thereby indicating a major fault in our system's expectations for male students."

The statement suggesting that teachers provide equal opportunities for all students (item 53) caused concern. Some respondents added caveats to the statement with such phrases: "as far as resources will permit," "Tall order," "To the best of my ability given the resources," and "humanly impossible -- especially with classes of 28 to 34."

As to mandatory parental involvement in student placement (item 56), one of the respondent added "Maybe. I'm not really convinced."

The refusal of entry to medically, physically or emotionally handicapped students (item 57) concerned two respondents. According to one of them "the school should always have this option and should never be bound to take any student under any circumstances." The other respondent indicated that such an option should only be permitted for "very disruptive or threatening students."

Personal Interviews

During the interviews, the respondents were asked to react to a statement on students not wishing to work in class being denied attending a regular classroom (item 51), and a statement concerning the refusal of entry of handicapped students (item 57).

The statement dealing with students not wishing to work in the classroom being denied the right to stay in class was added to the interview sessions because a majority of teachers agreed with the statement as contrasted to a majority of each of the groups disagreeing.

Refusal of Entry and/or Continuance.

A majority of the respondents disagreed that students who do not want to work be "deprived of the privilege of being retained in a regular classroom" (item 51). However, those respondents who agreed, which included all the teachers, focused on the delivery of a high standard of instruction as being important. Accordingly, they commented that all efforts would have to be made to help such students. "Other students", according to a teacher, "may also have problems such as being sexually abused. They need our help more than the child who is proven to be simply lazy."

Disagreement with exclusion from classrooms came especially from principals. Such statements as "they learn from one another," "kids need a chance to develop socially and educationally" and "no way should we deprive students" were a common theme among the principals who were interviewed.

About one-half of the interviewed respondents agreed that schools should be able to deny the entry of medically, physically or emotionally handicapped students who may not be able to conform to the norms of classroom practices. They indicated that their answer was predicated on the fact that schools are not equipped to serve such students. For example, an association respondent added "we don't have the facilities to accommodate these students." A teacher stated that "if the Department of Education supplies the manpower and facilities, then yes: presently no." A superintendent suggested that we "look at some of our schools. If the principal cannot handle handicapped students then you don't push those kids there."

An association respondent disagreed and stated that the schools "need aides, modifications to handle exceptional students, needed to make the staff aware of these special needs -- they need to be in-serviced." According to a superintendent, "the school's facilities can be modified in order that these students may be 'part of our society'." However, respondents believed that all students have a right to access to an education.

Situation #9: Student Access to Specialized Classes

The respondents were asked to reflect on two statements dealing with school board obligation and parental choice. The word "specialized" was used in reporting the perceptions of the respondents on access to classes or programs requested by parents in order to differentiate these classes or programs from those of "special education" classes. The respondents were guided by the following situation:

> A group of parents petition the school board to have their children receive 50 percent of their instruction in a language other than English or French. Yet another group of parents petition the school board for special classes for the gifted.

School Board Obligation. Of the respondents, 53.9 per cent disagreed that "school boards should be obligated to establish programs which are requested by a sufficient number of parents" (item 67, Table 15).

Parental Choice. "The right to choose the school or program they deemed best for their child(ren)" (item 69) was favoured by 80.0 per cent of the respondents. There were significant differences of opinion between the trustees and the other four groups and between public and separate school respondents. Of the trustees, 40 per cent agreed as compared with 90.0 per cent of the Department of Education respondents, 89.8 per cent of the teachers , 75.9 per cent of the principals, and 75.0 per cent of the superintendents. Support of parental choice was indicated by 91.9 per cent of the separate school and 74.8 per cent of the public school respondents.

Written Comments of Respondents

Thirteen of the respondents added comments to statements 67 and 69. All the respondents were concerned with funding and how it could affect existing programs. The right of parents to choose a school or program (item 69) was supported by most of the 13 respondents if the parents assumed the extra financial costs incurred by the jurisdiction.

Table 15
Perceptions on Right of Parents to Petition for Specialized Classes as it Concerns Equal Access to an Education and the Significant Differences of Opinion Among the Groups and Between the Public and Separate Respondents

Situation #9

A group of parents petition the school board to have their children receive 50 percent of their instruction in a language other than English or French. Yet another group of parents petition the school board for special classes for the gifted.

Questionnaire Statements	% Agree	% Disagree
School Board Obligation		
67. School boards should be obligated to establish programs which are requested by a sufficient number of parents.	46.1	53.9
Parental Choice		
69. Parents should have the right to choose the school or program they deem best for their child(ren).	80.0	20.0

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
89.8%	75.9%	75.0%	90.9%	40.0%

Percentage of each group that responded with "Agree"

Public School Authorities	Separate School Authorities
74.8%	91.9%

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* The percentages for sub-groups are provided only where the differences are significant.

Personal Interviews

During the interview, the respondents were asked to clarify their views on the right of parental choices.

Parental Choice. Most of the respondents agreed that parents should have the right "to choose the school or program they deem best for their child(ren)" (item 69). Two strands of responses emerged. According to a Department of Education respondent, in a "free and democratic society such matters should be encouraged if they can be integrated in the fabric of the society." A teacher commented that "in a multicultural society, the school or program may be the vehicle that parents use to maintain their cultural heritage."

The other group of respondents also agreed with the statement, in principle, but as one principal said, "too often the need of the parent to choose a school is not the need of the child." Another principal added that the "right of parent should be tempered with the child's ability. The parent may want a program the child can't handle." Only one principal disagreed, but indicated agreement in principle, if the "right" were exercised "within reason."

Your Personal Responses: Part Two

The respondents were asked whether they agreed or disagreed with seven statements on equality rights of students. Each of the statements dealt with an aspect of equality rights.

Principle of Equal Access. About two thirds of the respondents agreed that "equal access to all education programs for all students should be society's goal regardless of the costs" (item 72, Table 16).

Teaching Requirements. According to 99.0 per cent of the respondents, "teachers should be required to teach the core or compulsory part of the curriculum . . . (item 80).

Appeal Procedures. That "parents should have the right to an appeal procedure for actions and/or decisions that affect their child" (item 81) was favoured by 97.5 per cent of the respondents.

Private Schools. Most of the respondents (84.0%) disapproved student costs in private schools being covered by government grants for those wishing to enroll in a private school (item 82).

Diplomas. According to 80.0 per cent of the respondents, there should be alternative diplomas for students graduating from alternative programs (item 83).

Admission. About 70 per cent disagreed that "admission based on sex . . . may be justified for some courses" (item 84). Table 16 shows that those respondents with 21 or more years of experience agreed the most as compared with the respondents with six to ten years of experience agreeing the least.

Only 55.1 per cent of the respondents supported the statement that "admission based on sex of the student may be

Table 16
Personal Responses Concerning Equality of Access to an Education with Some Differences of Opinion Based on Respondents' Years of Experience

Questionnaire Statements	% Agree	% Disagree
Principle of Equal Access		
72. Equal access to all education programs for all students should be society's goal regardless of the costs.	63.8	36.2
Teaching Requirements		
80. Teachers should be required to teach the core or compulsory part of the curriculum as authorized by Alberta Education.	99.0	01.0
Appeal Procedure		
81. Parents should have the right to an appeal procedure for actions and/or decisions that affect their child.	97.5	02.5
Private Schools		
82. Students who choose to be educated in private schools should have the majority of the costs covered by government grants.	16.0	84.0
Diplomas		
83. Alternative diplomas should be offered to students graduating from alternative programs.	80.0	20.0
Admission		
84. Admission based on sex of the student may be justified for some courses.	28.1	71.9

	0 - 5 yrs.	6 - 10 yrs.	11 - 20 yrs.	21 or more yrs.
Percentage of each 'experience group' that responded with "Agree"	30.0%	9.7%	26.5%	36.4%
Percentage of total number of respondents	10.2%	15.8%	34.7%	39.3%

Questionnaire Statements	% Agree	% Disagree
85. Admission based on sex of the student may be justified for entry into some student activities such as sport teams.	55.1	44.9

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* The percentages for sub-groups are provided only where the differences are significant.

justified for entry into some activities such as sport teams" (item 85).

Written Comments of the Respondents

"Education can't be considered a COST. It's an investment. If politicians put a cost on EDUCATION they ought to also put a cost on IGNORANCE" and "that would be economic nonsense" were added to the statement concerning "equal access . . . regardless of cost" (item 72). Another respondent added that "The cities will never let it happen. Rural students will never have equal access--i.e., equal to city students."

With respect to teaching the core or compulsory part of the curriculum (item 80), one respondent added "They are! Teachers can be released for not teaching the core."

The establishment of alternative diplomas (item 83) caused concern. A respondent protested "And create second and third class citizens" and then circled "Disagree" whereas another respondent agreed with the statement but added "But such alternative programs have to become far more meaningful."

Personal Interviews

During the interview, two statements were discussed. A statement dealing with private schools was added to the interview because 16 per cent of the respondents to the questionnaire stated that private schools should be supported.

The other statement dealt with admission to courses.

Private Schools. Most of the respondents disagreed that private schools be funded (item 82). A principal said "I could accept some funding for private schools. However, I would demand that the schools be subject to the same requirements as public schools for funding." Another respondent argued there should be zero funding for private schools.

According to a teacher, "we live in a free society. Parents should have the freedom of choice otherwise our captive audience has no freedom of movement."

Admission. According to the minority of interviewees, who were mainly principals, the admission of students into certain courses, based on sex, can be justified for some vocational courses or for some other courses such as physical education (item 84).

The majority of the respondents disagreed that admission requirements based on sex can be justified. These respondents stated there were no reasons to exclude students and that courses should be available to all students. For example, according to a principal, "girls can take mechanics and do equally as well as the boys. Administrative problems and not the abilities of either group forces administrators to close courses for either sex." Another principal also disagreed that there be exclusion from courses based on the sex of student, but added that there was a "tradition and societal expectations to contend with before accepting an open policy."

Summary

Situation 6: Equal Access. The respondents stated that publicly funded schooling was, in principle, correct. Those respondents with less than five years of experience were less supportive of all children having the right to publicly funded schooling than were the other respondents. Most agreed that the province should ensure there be equality of access to an education for the disabled and the nondisabled as well as a full range of alternative education placements. Most of the interviewed respondents supported the statement dealing with the right to publicly funded schooling, but added qualifiers such as everyone has the right but the way in which it is implemented will vary.

The phrase "affirmative action" caused problems. The respondents questioned the meaning of the term. During the interview sessions there was general agreement with the principle after it was explained. Agreement or disagreement was based mainly on the application of the principle of affirmative action. However, because the respondents in the questionnaire and in the interviews queried the term in the survey or sought an explanation of the term, the responses may not accurately reflect the respondents' perceptions. It is noteworthy that teachers and principals were the strongest supporters of the statement requesting the School Act define affirmative action requirements.

As to special education, most respondents agreed that the child should be placed in the most suitable program. For example, the respondents agreed that to place a disadvantaged child into a regular classroom, without thorough review of the child's capability, can be harmful. Correspondingly, they marginally supported the statement dealing with the placement of learning disabled students in regular classrooms.

Situation 7: Student Inability to Conform. A majority of respondents were not convinced that there may be reasons for depriving a student of the privilege of being retained in a regular classroom. Most respondents supported appeal procedures for students who do not conform to the norms of the classrooms. They also agreed that teachers should provide equal opportunity for all students in their classroom. However, about two-thirds of the respondents agreed that schools should be able to refuse the admission of medically, physically or emotionally handicapped students who can not conform to the norms of classroom practices.

During the interviews, the ambivalence of the respondents towards denial of entrance into regular classes of students who did not wish or might not be able to conform to the norms of classroom practices was even more apparent.

Moreover, during the interview sessions, it became obvious that teachers, more than the other respondents, stated that students who do not want to work in class should be deprived of the privilege of being retained in a regular classroom. A large majority of the other respondents disagreed. In dealing with the entry of handicapped students, there was agreement that they have the right to an education. Agreement that schools can refuse entry was based mainly on lack of facilities or supplementary personnel being made available by the Department of Education.

The respondents also supported having selection procedures related to the purpose of special classes, and having selection procedures specifying mandatory parental involvement in the placement of disabled students.

Situation 9: Student Access to Specialized Classes. Most respondents agreed that parents have the right to choose the school or program they deem best for their child(ren). Differences of opinion occurred among the groups and between the public and separate respondents. For example, trustees opposed the idea of the right to parental choice more than did other respondents. However, three-quarters of the public school and most of the separate school respondents agreed that the parents ought to have the right to choose the school or program.

Your Personal Responses: Part Two. The respondents strongly supported the statements dealing with teachers being required to teach the core or compulsory part of the curriculum, parents having the right to an appeal procedure dealing with the actions or decisions of authorities that may affect their child(ren) and the provision of alternative diplomas for students taking alternative programs. Most respondents also supported the principle of equal access and strongly rejected the suggestion that admission requirements be based on the sex of the student. Moreover, during the interviews, most of the respondents also agreed that administrative requirements based on the sex of the student cannot be justified.

CHAPTER 8

Perceptions on Minority Language Educational Rights and Heritage Language Instruction

This chapter addresses sub-problem three:

> What are the perceptions of school authorities concerning "Minority Language Educational Rights" of parents and the "multicultural heritage of Canadians" in the context of the Charter?

Perceptions were gathered on minority language educational rights of parents and students and on heritage language instruction as they related to sections 23 and 27 of the Charter.

Sections 23 and 27 and commentaries on the two sections were used as a guide in developing the situations and their accompanying statements. These two sections read as follows:

> 23(1) Citizens of Canada
> (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
> (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,
> have the right to have their children receive primary and secondary school instruction in that language in that province.
> (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.
> (3) The right of citizens of Canada under subsection (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province.
> (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the

> provision to them out of public funds of minority language instruction; and
> (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.
>
> 27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

The respondents were given two situations followed by statements dealing with each situation within the context of minority language educational rights and the preservation and enhancement of the multicultural heritage of Canadians. The term "official minority language" was mentioned in some of the statements but not in the situations. However, neither the Charter nor other terms that may be associated with the Charter were mentioned in the situation or in the statements. The respondents were asked to indicate agreement or disagreement with the statements. Some respondents also chose to add comments; these comments are reported separately after the report on each situation.

The analyses of the data for the nine statements of Situation 8, the two statements of Situation 9 and the one statement of "Your Personal Responses" are reported, respectively, in Tables 17, 18 and 19.

Situation #8: Responsibilities in Education

The respondents were asked whether they agreed or disagreed with nine statements dealing with minority language instruction within the context of school board and provincial responsibilities, transportation responsibilities, and parental rights to minority language instruction. Their answers were guided by the following situation:

> A small group of parents request that their children be instructed in French. The number of students is not sufficient to form a class. The board suggests the students continue to take their schooling in the Immersion classes that are operated by the school system.

School Board Responsibilities. According to 84.3 per cent of the respondents, boards "should be obligated to offer minority language instruction only when there are sufficient numbers of students to form a classroom" (item 58, Table 17). With respect to tuition agreements (item 62), 95.5 per cent agreed that the school board should have the right to make arrangements with neighboring school jurisdictions to centralize French language services. However, 88.8 per cent of the respondents disagreed that school boards be responsible for curricular services such as translating textbooks (item 65).

Of the respondents, 88.3 per cent agreed that "where there are French Immersion classes in a jurisdiction, these classes should be an adequate form of instruction in the official minority language" (item 66). Upon analysis of the responses, 91.8 per cent of the principals and 93.3 per cent of the teachers agreed that Immersion classes offered an adequate form of instruction. There was a significant difference of opinion between the teachers and principals and the other three respondent groups.

Provincial Responsibilities. With reference to provincial

Table 17
Perceptions on Parent Rights to have French Minority Language Instruction for their Children and Some Significant Differences of Opinion Relative to Situation #8

Situation #8

A small group of parents request that their children be instructed in French. The number of students is not sufficient to form a class. The board suggests the students continue to take their schooling in the Immersion classes that are operated by the school system.

Questionnaire Statements	% Agree	% Disagree
School Board Responsibilities		
58. A school jurisdiction should be obligated to offer minority language instruction only when there are sufficient numbers of students to form a classroom.	84.3	15.7
62. School boards should have the right to make a tuition arrangement with a neighboring school jurisdiction to centralize French language services.	95.5	04.5
65. Curricula services, such as translating approved texts and workbooks, should be the responsibility of the local school boards.	11.2	88.8
66. Where there are French Immersion classes in a jurisdiction, these classes should be able to offer an adequate form of instruction in the official minority language.	88.3	11.7

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
93.3%	91.8%	75.0%	78.3%	72.7%

Table 17 (continued)

Perceptions on Parent Rights to have French Minority Language Instruction for their Children and Some Significant Differences of Opinion Relative to Situation #8

Questionnaire Statements	% Agree	% Disagree
Provincial Responsibilities		
60. The provincial government should assume all financial responsibility for educating children in the official minority language.	28.2	71.8

Percentage of each group that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
16.9	28.2	35.3	34.8	60.0

Questionnaire Statements	% Agree	% Disagree
64. There should be autonomous jurisdictions in the province that will educate children in the Official Minority language?	27.9	72.1

Percentage of each group that responded with "Agree"

Public School Authorities	Separate School Authorities
24.8%	41.2%

Questionnaire Statements	% Agree	% Disagree
Transportation Responsibilities		
59. Parents wishing minority language instruction should be prepared to assist in paying for the extra costs of transportation to a central location.	81.7	18.3
Parental Rights		
61. Parents, whose first language is French should have the right to request French language instruction for their children.	47.8	52.1
63. In principle, there should be Parent Advisory Councils in order to allow parents, whose first language is French, the opportunity to participate in the development of their own schools within the present school district systems.	62.8	37.2

Percentage of each group that responded with "Agree"

Public School Authorities	Separate School Authorities
58.7%	75.7%

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* The percentages for sub-groups are provided only where the differences are significant.

responsibilities, 71.8 per cent *disagreed* that the province should assume the responsibility "for educating children in the official minority language" (item 60). Significant differences of opinion occurred between the teachers and principals and the other groups. Specifically, 60.0 per cent of the trustees favoured the province assuming financial responsibility for minority language education whereas only 16.9 per cent of the teachers and 28.2 per cent of the principals were in favour. Moreover, 72.1 per cent of the respondents *disapproved* the creation of "autonomous jurisdictions in the province that will educate children in the Official Minority language" (item 64). Some differences of opinion between the public and separate school respondents occurred. Autonomous jurisdictions were favoured by 24.8 per cent of the public school respondents as compared with 41.2 per cent for the separate school respondents.

Transportation Responsibilities. Of all the respondents, 81.7 per cent agreed that "parents wishing minority language instruction should be prepared to assist in paying for the extra costs of transportation to a central location" (item 59).

Parental Rights. Of the respondents, 52.1 per cent *disagreed* that "parents, whose first language is French should have the right to request French language instruction for their children" (item 61). However, 62.8 per cent favoured, in principle, parent advisory councils for the Francophone parents but, within the present school district systems. Some significant differences of opinion occurred between the public and separate school respondents. Fewer public school respondents (58.7%) agreed as compared with the separate school respondents (75.7).

Written Comments of the Respondents

Five of the respondents added comments. With respect to the province assuming financial responsibility for minority language education (item 60), one of the respondents replaced "provincial government" with "federal government" thereby suggesting minority language instruction be a federal matter. The other four respondents underlined the word "request" and suggested that such a word allowed the jurisdiction the option of deciding what was best for all concerned.

The idea of "Parent Advisory Councils" (item 63) caused unusual reactions. Some respondents equated the establishment of advisory councils for French language parents to that of separate schools being established in jurisdictions where numbers did not warrant. As a consequence, education could suffer. As to autonomous jurisdictions for official minority language students (item 64), respondents commented that such jurisdictions would be too costly.

Personal Interviews

During the interview sessions, three statements that caused some differences of opinion in the questionnaire were discussed.

School Board Responsibilities. Most of the respondents suggested that French Immersion classes offered an adequate form of instruction (item 66). Whether or not French Immersion classes offered an adequate form of instruction in the official minority language was answered by the respondents on the basis of their linguistic background. It should be noted that their linguistic background was mentioned by the respondents during the interview and only in relation to this statement.

One of the principals stated that French immersion classes "can provide effective instruction assuming adequate resources are available," whereas a teacher stated that the alternative was bussing, which she/he opposed. An association respondent spoke about the positive aspects of having a school with students studying in either the French immersion language or English language section. However, there were parental perception problems. Parents, whose children were not in the immersion program, felt threatened by the mass influx of students from outside the school area. According to this associations respondent, the school continued to offer English language schooling because the influx of immersion students enabled the school to continue to exist instead of being amalgamated with a neighboring school and, that "such perception problems exist everywhere."

The minority who disagreed with the statement emphasized that such French immersion instruction used second language acquisition methods whereas minority language instruction used first language acquisition methods. This was analogous, according to one principal, to teaching English students as if they had never heard or seen their language before entering school. The principal further added that immersion instruction was "tailored to anglophone children." The Department of Education respondent stated that "immersion education was misunderstood only in Alberta. In the other provinces, there was a clear split between the two programs."

Provincial Responsibilities. Most of the respondents disagreed that "the provincial government should assume all financial responsibility for educating children in the official minority language" (item 60). According to a Department of Education respondent, "45 per cent of the taxes comes from local requisition. Local taxpayers should continue to pay a share" thereby suggesting that local autonomy must be protected. Moreover, after reviewing the statement again the Department of Education respondent added that "this is not reality. A simple solution to a complex situation seldom works." One of the principals stated that "minority education should be a joint Federal-Provincial responsibility. The Federal government should be willing to assume financial responsibility because of its responsibilities under the Charter."

A minority of the respondents favoured the province assuming all financial responsibility. One principal stated that "I believe the Federal role in the teaching of minority education is in financing." This same respondent also added that "I would like to see every child learn the other language." One of the teachers also agreed as long as it was "viable and feasible."

Four of the 19 respondents, two representing the public school and two the separate schools, approved the establishment of autonomous jurisdictions to educate minority language students (item 64). A principal suggested that agreement was based mainly on "sufficient numbers making it worthwhile."

Most respondents opposed the concept of autonomous jurisdictions for French language programs because, as one principal said, "I do not believe in the segregation." One of the associations' respondent argued that "it causes splintering and I don't see the importance of governance." A teacher commented that "I see taxation problems. If we are to respect our Constitution, then the province should assume the responsibility." One of the superintendents argued that "it's easy to talk about it but not plausible for the immediate future. Autonomous jurisdictions may evolve over a number of years." In other words, disagreement for autonomous jurisdictions was based on two opposing propositions. One group of respondents opposed the idea because it caused "splintering or segregation" whereas the other group wanted the changes to evolve.

Parental Rights. Most of the respondents favoured the establishment of parent advisory councils. However, two different kinds of reasons were given. One group of respondents suggested that the development of their own schools within the same district was a benefit to all, but strongly disagreed that these parents be encouraged to form their own school board. Most suggested that the advisory component was important but they insisted these councils should be controlled by the school board. One of the teachers suggested that if they "want to influence the decisions, they should get people to run for the school board" and then added a caveat that "I can not see a French school publicly funded but privately controlled."

The other group of respondents stated that the establishment of an advisory council was only the first level of development. According to one of the superintendents, the forming of advisory councils was the first stage in an incremental process that would eventually permit a "greater level of responsibility." One principal stated that

> I believe in the evolutionary process. I fear that school boards talk in ideal terms but deny any kind of significant input into the process. Accordingly, if school boards are sincere in consulting parents on hiring and programming practices, then they should be ready to take parent concerns seriously.

Another principal said "it should be more than a nominal role they [advisory councils] play in most schools" while one of the associations' respondent added that "I think there is a need for local control and involvement by primary stakeholder groups."

Four of the respondents disagreed that "in principle, there should be Parent Advisory Councils . . ." (item 63).

The Department of Education respondent suggested that "chaos exists in the area until such time as the province gives direction at the legislative level." One principal was happy to see francophone parent advisory councils but would be "happier if others, such as anglophone children, could be accepted" in such schools.

Situation #9: Language Instruction Privileges

The respondents were asked whether they agreed or disagreed with three statements. Their responses were guided by the following situation:

> A group of parents petition the school board to have their children receive 50 percent of their instruction in a language other than English or French. Yet another group of parents petition the school board for special classes for the gifted.

"The development of Heritage languages other than the two official languages should be encouraged" (item 68, Table 18) was favoured by 73.8 per cent of the respondents. Of the respondents, 65.6 per cent disagreed that "all children should be obligated to take a second language" (item 70). Table 19 shows that 63.7 per cent of the trustees, 40.5 per cent of the principals and 31.3 per cent of the superintendents favoured the teaching of a second language being obligatory as opposed to 17.4 per cent of the Department of Education personnel and 26.7 per cent of the teachers. This difference of opinion between the two groups was statistically significant.

Written Comments of the Respondents.

Five respondents added comments. With respect to the development of heritage languages (item 68), two of the respondents stated the teaching of heritage languages to be "extraneous to public schooling" which should be solely supported by these parents.

As to making the teaching of a second language obligatory (item 70), one respondent added "only if the school boards improve their delivery system to the extent that this can be a useful and realistic program."

Table 18
Perceptions on Parent Rights To Petition for Special
Instructional Privileges and Some Significant
Differences of Opinion in Situation #9

Situation #9

A group of parents petition the school board to have their children receive 50 percent of their instruction in a language other than English or French. Yet another group of parents petition the school board for special classes for the gifted.

	Questionnaire Statements	% Agree	% Disagree
68.	The development of heritage languages other than the two official languages should be encouraged.	73.8	26.2
70.	All children should be obligated to take a second language.	34.4	65.6

Percentage of each 'age group' that responded with "Agree"

Teachers	Principals	Superintendents	Dept.Ed.	Trustees
26.7%	40.5%	31.3%	17.4%	63.7%

* The percentages for sub-groups are provided only where the differences are significant.

Personal Interviews.

In the questionnaire, a greater proportion of trustees and principals than the other respondents agreed with the statement that "all children should be obligated to take a second language" (item 70). The pattern during the interviews did not appear as clearly. There were three strong arguments in favour of the statement that a second language be obligatory. For example, one principal said that "in other provinces French is taught to the vast majority" and added that "I want French as part of the core." A teacher commented that "two or three languages are important in a multicultural society." Another principal added that French is entrenched in our constitution and the accessibility to the teaching of French was a greater issue than children being obligated to take a second language.

"I don't like to force it," as stated by a principal, was a common response by the majority who disagreed with the statement. Others also argued that a second language should be encouraged but not obligatory. Two of the 19 respondents suggested that boards are obligated to provide second language instruction if it's possible and desired by the parents and students. However, one principal questioned the wording of the statement. According to this principal "what is a second language? maybe Cree, Polish, Ukrainian, etc! *Some kids would have this as a* third language and force that -- no way." Taking a different approach, a teacher suggested that "we are a multicultural world and the teaching of a second language should be "based on communication reasons because we live in a Global Society."

Summary

Situation 8: Responsibilities in Education. According to the respondents, school boards are obligated to offer minority language instruction when sufficient numbers warrant forming a classroom. There was general agreement that school boards should have the right to make tuition agreements with their neighboring jurisdictions. Curricular responsibility, according to the respondents, was a provincial matter and not a school board responsibility. However, when questioned about Immersion classes being an adequate form of instruction for minority language students, differences of opinion between the groups occurred.

Most respondents did not agree that the financial responsibility for educating these students should be born solely by the province. Most also opposed the formation of autonomous jurisdictions to educate minority language children. In statistical terms, the differences of opinion between the public school and separate school respondents was significant with greater agreement for autonomous jurisdictions by the latter.

On transportation, the response was conclusive. Parents should be asked to pay the extra costs.

The right to request French language instruction was opposed by 52.1 per cent of the respondents. According to two thirds of the respondents, parent advisory councils for the French language parents were acceptable as councils if within the district. However, separate school respondents were more supportive of the establishment of parent advisory councils than were the public school respondents.

During the interview sessions, differences of opinion did not appear to follow the same pattern. The respondents did not see the province as giving leadership in the issue. They opposed homogeneous or ethnic based schools or districts because they opposed all forms of segregation or splintering. The respondents also argued that it was better that changes occur in an incremental manner. With reference to French immersion instruction, the English speaking respondents stated that French immersion instruction was adequate for all wishing to be taught in French whereas the French speaking respondents stated that such a program was inadequate for the teaching of French as a first language.

Situation #9: Language Instructional Privileges. The respondents were asked whether or not the development of heritage language courses other than the two official languages should be encouraged. A large majority agreed.

However, when a specific suggestion was stated; namely that "children should be obligated to take a second language", a fairly large majority objected. It is noteworthy that trustees were the most supportive of an obligatory second language. During the interview session, it became evident that differences of opinion existed. Some authorities did not like the obligatory aspect. Others stated that the second language could be any language, not necessarily French. One respondent argued that we should catch up to the rest of Canada and make French accessible to all before encouraging other languages.

CHAPTER 9

Perceptions on Guaranteed Rights and Freedoms and Fundamental Freedoms

This chapter addresses sub-problem four:

> What are the perceptions of school authorities concerning "Guarantee of Rights and Freedoms" and "Fundamental Freedoms" of pupils in the school in the context of the Charter?

Respondent perceptions as they related to sections 1 and 2 of the Charter were gathered. Sections 1 and 2 and commentaries on these sections were used as a guide in developing the situations and their accompanying statements as well as the statements on "Your Personal Responses." The relevant sections read as follows:

> 1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
>
> 2. Everyone has the following fundamental freedoms:
>
> a) freedom of conscience and religion;
> b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
> c) freedom of peaceful assembly; and
> d) freedom of association.

One situation followed by statements within the context of "Guarantees of Rights and Freedoms" and some statements dealing with "Your Personal Responses" within the context of "Fundamental Freedoms" were posed to the respondents. Neither the Charter nor terms associated with the Charter were mentioned in the situation nor the statements. The respondents were asked to indicate agreement or disagreement with the statement.

The analyses of the data for the two statements of Situation 1 and the four statements of "Your Personal Responses" are reported in Tables 20 and 21, respectively.

Situation #1: Student Freedoms

The respondents were asked whether they agreed or disagreed with three statements. Their answers were guided by the following situation:

> A student has been punished, by the principal, for his/her blatant disregard of a major school regulation or directive.

Of the respondents, 87.5 per cent agreed that "the privileges and responsibilities of students should be defined by school board policy or policies" (item 8, Table 20). However, fewer of the respondents (63.5%) agreed that "the privileges and responsibilities of students should be defined, by statute, in the School Act of the Province of Alberta" (item 9). In other words, most respondents agreed that privileges and responsibilities be defined in policy and, less strongly that they be defined in the School Act.

Personal Interviews

As there were no significant differences of opinion among the group of respondents, statements 8 and 9 were not pursued during the interview sessions.

Table 20
Perceptions on Student Freedoms

Situation #1

A student has been punished, by the principal, for his/her blatant disregard of a major school regulation or directive.

	Questionnaire Statements	% Agree	% Disagree
8.	The privileges and responsibilities of students should be defined by school board policy or policies.	87.5	12.5
9.	The privileges and responsibilities of students should be defined, by statute, in the School Act of the Province of Alberta.	63.5	36.5

Your Personal Responses: Part Two

The respondents were asked their personal opinion on four statements dealing with fundamental freedoms. Most respondents supported the statement "the rights and responsibilities of students should increase as the student becomes older" (item 71, Table 21). About 80 per cent also agreed that "students should have the privilege of expressing their concerns in any manner that is not disruptive to the learning rights of other students" (item 75). Moreover, 79.9 per cent agreed that "senior high school students should have the privilege of appealing the actions and/or decisions of teachers, school principals and other authorities" (item 77). However, when it came to a specific suggestion, only 58.2 per cent agreed that "a school ombudsman system should be introduced in Alberta in order to develop an awareness of teacher and student rights and responsibilities" (item 73). A significant difference of opinion occurred between the teachers, principals and Department of Education respondents and the superintendents and trustees. Table 21 shows that most trustees and superintendents disapproved of having an ombudsman for schools.

Table 21
Personal Responses as well as Significant Differences of Opinion Among the Groups Concerning Fundamental Rights of the Individual

	Questionnaire Statements	% Agree	% Disagree
71.	The rights and responsibilities of students should increase as the student becomes older.	93.4	6.6
73.	A school ombudsman system should be introduced in Alberta in order to develop an awareness of teacher and student rights and responsibilities.	58.2	41.8
	Percentage of each group that responded with "Agree" Teachers 63.3% Principals 56.6% Superintendents 35.3% Dept.Ed. 79.2% Trustees 36.4%		
75.	Students should have the privilege of expressing their concerns in any manner that is not disruptive to the learning rights of other students.	81.1	18.9
77.	Senior high school students should have the privilege of appealing the actions and/or decisions of teachers, school principals and other authorities.	79.9	20.1

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* The percentages for sub-groups are provided only where the differences are significant.

Personal Interviews

The idea of an ombudsman was not overwhelmingly supported. Of the respondents, teachers were more supportive of the idea than the other groups. Of the 12 interviewees who responded to the statement, one associations' respondent, one trustee and four teachers agreed. The trustee added that the "solution may not be the answer." One teacher stated that "hopefully the ombudsman would be impartial and honest." Another teacher "agreed only if it was funded by the provincial government."

The respondents who disagreed expressed themselves in strong terms. For example, a Department of Education respondent argued that "the more rules you have the more problems you create." A trustee stated that "I prefer a mechanism other than a Big Power. In fact, I prefer a process in which the last appeal is to the Minister." One of the association respondents suggested that "instead of providing mechanisms to protect the rights of students, it might be profitable to provide a framework whereby parent advisory groups are encouraged to ensure that schools are adequately provided for." The respondents seemed to reflect the premise that parents are the best mechanism of ombudsmanship that can exist.

Summary

Situation #1: Student Freedoms. Most respondents favoured school board policies defining student privileges and responsibilities. They were less supportive, however, of having privileges and responsibilities defined in the *School Act*.

Your Personal Responses: Part Two. In dealing with personal rights and freedoms, most respondents supported the statement recognizing that the privileges and responsibilities of students should increase with their age. Most also supported students having the privilege to express themselves in a non-disruptive manner as well as the right to appeal the actions of the school authorities.

However, the concept of an ombudsman for schools was not as well received. During the interview sessions, the respondents gave the idea less than enthusiastic support. One-half of the respondents strongly supported the concept whereas the other half were opposed to the concept.

It was agreed that senior high school students should have the privilege of appealing the actions and/or decisions of school authorities.

CHAPTER 10

Summary of Respondents Beliefs and Attitudes Regarding the Rights and Freedoms of Pupils and Parents Implicit in the Principles of the Charter

The study addresses the question:

> What are the perceptions of Alberta school authorities regarding the rights and freedoms of pupils and/or parents implicit in the principles in the Charter?

The purpose of this chapter is to report the findings based on the detailed analysis of each of the sub-problems. Respondents were given a series of situations, followed by statements dealing with each situation within the context of specific sections of the *Charter*. However, neither the *Charter* nor terms associated with it were mentioned. The respondents were asked to indicate agreement or disagreement with the statement.

For purposes of development, analysis and reporting, the situations were related to the relevant sections of the *Charter*. Information was gathered on how school authorities perceived pupil control as it related to "legal rights," "equality rights," "minority language educational rights," and "guarantee of rights and freedoms and fundamental freedoms."

Each of the situations and statements dealing with pupil control was further divided into three sub-sections. The first sub-section dealt with perceptions relative to pupil control (section 7 of the Charter). The second sub-section dealt with perceptions on "search and seizure" (section 8 of the Charter), and the third sub-section on "cruel and unusual treatment or punishment" (section 12 of the Charter). All three sub-sections were examined within the context of pupil control.

Respondents were also given a series of situations, followed by statements dealing with each situation within the context of equality rights (section 15 of the Charter), minority language educational rights and multicultural heritage rights (sections 23 and 27 of the Charter), guarantee of rights and freedoms and fundamental freedoms (sections 1 and 2 of the Charter) and additional statements designed to evoke personal responses to Charter related concerns.

The respondents were asked to identify their position as a school authority (for example, a teacher or trustee), indicate whether they were public or separate school respondents and give the number of years they had been a school authority.

Principles Enunciated in the Charter and Perceptions on Student/Parent Rights

Sub-Problem One

Sub-problem one addresses the question:

> What are the perceptions of school authorities concerning "Legal Rights" of pupils in the school in the context of the Charter?

Section 7 of the Charter was used as a guide in developing five situations and their accompanying statements. Some of the statements in "Your Personal Responses: Part Two" were also guided by section 7.

The Charter: Section 7. Section 7 of the Charter reads as follows:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

The principle of fundamental justice may allow students and parents to challenge school rules and/or provincial statutes. The term itself begs definition. For example, even before the enactment of the Constitution Act, 1982, Mr. Justice Fauteux in R. v. Duke (1972) defined, with the agreement of a nine-judge court, the term "fundamental justice." He suggested that a court must act in a fair and unbiased manner as well as be seen to act fairly by allowing the defendant an opportunity to state his/her case.

Mr. Justice McDonald (1982) also suggested that the principle of natural justice require the person to be given a fair hearing, to receive adequate notice before a hearing, to have an opportunity to present his/her case, to meet the accuser, and possibly to have the right to cross-examination, the right to have counsel and receive a reasoned decision. He further stated that if sections 8 to 14 were included in the specifics of section 7, then the principle of fundamental justice would be broader in scope than the principles of natural justice.

Anderson (c. 1984:57) indicated that section 7 guarantees that a person whose rights are adversely affected has certain procedural rights to ensure fairness.

However, in dealing with students, Gaffield and West (1978) had argued that juveniles were not adults. The relationship between the juvenile and the parent and/or teacher was such that certain situations or incidents demanded that juvenile behaviour controls, that were normally deemed to be disagreeable by adults, might be essential in controlling juvenile behavior.

Students, according to Magsino (MacKay, 1983), are not ready to exercise independently the same rights as adults. Students should be granted, at the discretion of the educators, their rights in accordance with their individual capabilities.

The Supreme Court of Canada, in *R.* v. *Jones* (1986) confirmed that provincial regulations relative to truancy did not deprive the parent of the liberty right as enunciated in section 7 of the *Charter*. Pastor Jones had challenged the decisions of the school authorities as well as the legislation that they were upholding. He believed the legislation violated the principles of fundamental justice that he was entitled to under section 7. In the *Jones* (1986) case, the court did not address whether or not the *Charter* applied to school boards.

Perceptions. The respondents in this study addressed the problem of student behaviour control within the context of the school, the student, parent consultation, and policies and/or regulations. Most respondents supported the statements suggesting that teachers have the responsibility to control student behaviour, that they have the same authority as parents and that they have the right to refuse to teach students who blatantly disregard school regulations. Respondents also agreed that the principal has the right to punish transgressing students. Even though most respondents agreed with the statements, there were differences of opinion on the authority of the teacher, teacher refusal to teach certain students and the principal's right to punish transgressing students.

The interviewed respondents supported the authority of the principal in dealing with entry of students to the classroom or the school. Most also believed that it was the principal's role to punish transgressing students.

Public school respondents differed from separate school respondents in their responses to the statement about the collective rights of the other students versus the individual rights of students found guilty of a major school infraction. An overwhelming percentage of public school respondents agreed that the right of the other students to an education should supersede the rights of the individual who is found guilty of a major school infraction. About three quarters of the separate school respondents agreed with this right. Interviewees stated that a student's individual rights did not abrogate the collective rights of the other students. However, the respondents argued that the right to an education cannot be denied to a student found guilty of a major school infraction.

Most respondents supported the statement that parents should be consulted before action is determined in cases of major infractions of school regulations or directives. Differences of opinion among the five respondent groups occurred on the topic of consultation with parents in cases of major infractions.

According to most respondents, regulations should exist to lessen the possibility of inconsistency among school administrators. Most trustees supported the present wording of the School Act on expulsion in contrast with the other respondents, and this difference of opinion was statistically significant. However, the majority of interviewees questioned the wording of the School Act. Most agreed that the present method of allowing the school to expel the student was correct. Moreover, they stated that parents should take their appeal to the school board and that the minister should be involved only if the matter could not be handled locally. Inconsistency in pupil control was not an issue for principals. According to the principals, flexibility was needed to deal with the different demands placed on the school by each community. The other respondents were less supportive of the principals' points of view. They argued that monitoring by the central office would protect the student from administrator inconsistency in reaching decisions that affect the privileges of individual students.

Second, as to locker search, an overwhelming majority agreed that teachers and principals should be permitted to use their judgment in protecting the students' right to privacy.

Third, police interrogation of students in the school can be justified, according to most respondents. About two-thirds also agreed that questioning should be done in the home, except in cases of urgency. About three-quarters of the principals agreed as compared with a simple majority of teachers. The presence of an adult during all forms of police questioning was supported by most respondents. Most wanted the parents, especially of elementary students, to be informed of such police action. The respondents also agreed that the administrator or a designate should be present during police interrogation in the school. Though a greater proportion of public than of separate school respondents agreed, the difference was ~~not apparent~~ during the interviews. Disagreement seemed to focus on which adult should be present. Protecting the privacy of the student was deemed to be a priority. Furthermore, most respondents agreed that there should be regulations defining the manner in which students may be questioned.

Fourth, about two-thirds of the respondents supported a code of teacher responsibilities in order to protect students from arbitrary punishment. Also, most of the respondents agreed that a teacher should take into account the ability of the child(ren) to understand that a given act is willful or disruptive to the class.

As to the fifth situation, namely punishment such as the writing of lines, about two-thirds of the respondents disagreed that reasonable action or decision on the part of the teacher or principal can be legislated as part of the School Act. In contrast to the trustees, none of whom agreed with the statement, 55 per cent of the teachers agreed. Interviewed teachers indicated a need for greater guidance to resolve conflicts. Trustees indicated that attempting to legislate reasonableness was like trying to legislate morality.

In principle, the respondents supported both allowing students the opportunity to explain their actions as well as allowing parents to appeal decisions or actions affecting their children.

The Charter: Section 8. Section 8 reads as follows:

> Everyone has the right to be secure against unreasonable search or seizure.

Schools exercise discretionary powers over the activities of their students. Search of lockers and seizure of locker articles by school authorities should be balanced with the school's obligation to supervise students' actions and society's understanding of what is reasonable in a free and democratic society. MacKay (1983) suggested that the courts will have to balance the school's discretionary rights with those of society's understanding of reasonableness.

Anderson (c.1984) suggested that the roles of the school administration and of the police in locker searches are different. In R. v. James Michael G. (1986), the Ontario Court of Appeal ruled that the school principal has the discretionary power to decide whom to consult in minor offences and whether to call in the law-enforcement authorities. The court stated that it assumed that the affairs of the school, the teachers and the principal were subject to the Charter. However, the court did state that in cases where the principal was acting as an agent of the police in order to detect a crime instead of acting as principal in attempting to maintain discipline in the school, such action could be disputed. In other words, the judiciary would rigorously interpret section 8 whenever police officers were involved in school searches or seizures but would apply the principles of the "in loco parentis" doctrine to the actions of school administrators that are internal to the school functions and unrelated to police action.

Perceptions. In addressing search and seizure, most respondents agreed that school administrators should have the authority to search lockers and/or seize articles only if reasonable suspicion exists. Of the respondents, about two-thirds disagreed that there should be regulations to protect students against unreasonable search and seizure. Furthermore, about two-thirds of the respondents also disagreed that the police should have the right to search lockers and seize articles with or without the school's permission even though the respondents overwhelmingly supported the statements giving the police the right to search student lockers when in the presence of the principal or designate. Some significant differences of opinion occurred between the principals and the teachers, superintendents and trustees. Principals strongly objected to police search and seizure actions without their permission. About two-thirds of the respondents agreed that the school should have the right to search student lockers. Moreover, according to the respondents interviewed, the collective right of the students was more important than the issue of lockers being private or public property. With the exception of teachers and principals, respondents stated that they would respect a court ruling making lockers private property even though such a ruling might cause problems for the schools.

The respondents indicated a preference for school boards providing regulations to guide the school in police search and seizure of articles.

The Charter: Section 12. Section 12 reads as follows:

> Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Anderson (c. 1984), citing Morel, stated that cruel and unusual treatment or punishment occurred within the context of section 12 when the punishment itself was cruel and unusual, the situation itself was cruel and unusual, the punishment was excessive in relation to the offence, and when the arbitrariness of the punishment rendered it cruel and unusual.

Canadian common law, which has in part been incorporated into Criminal Code (section 43), has also guided the courts and school authorities in determining what is cruel and unusual punishment.

Specifically, in The Peel Board of Education (1987) case, the Ontario Supreme Court ruled that suspensions or expulsions cannot proceed until criminal charges have been adjudicated. The Supreme Court also stated that the principal and the board went contrary to the fundamental principle of our system of justice in which everyone is presumed innocent until found guilty by due process of law.

Perceptions. Most respondents, in addressing punishment as a deterrent, would not allow teachers giving the whole class detentions and/or allowing teachers using any form of punishment as a deterrent. Most respondents also opposed the abolition of corporal punishment but favoured a code of student rights. A minority of interviewed respondents, who wanted corporal punishment prohibited, argued that it was too prone to abuse and that a code of student rights and responsibilities might be a way of resolving the question. The majority of interviewees suggested that such punishment should be kept as a discretionary power, otherwise all flexibility would be removed; they also opposed a code of student rights.

Most of the respondents agreed that the teacher should have the right to determine the manner of student behavior control. Teachers and trustees were the most supportive of this position. Interestingly, about 90 per cent with five years of experience or less as compared with about two-thirds of the respondents with 21 or more years experience supported the teacher having this right. Sarcasm as a punishment was overwhelmingly rejected by the respondents. Fewer of the respondents with six to ten years of experience disapproved of such forms of punishment. The interviewed respondents unanimously condemned sarcasm as an acceptable method of punishment. Furthermore, a majority of the respondents disagreed that "arbitrariness in student behavior control practices . . . can be justified". The same proportion agreed that "punishment that is excessive in one circumstance may be acceptable in another circumstance." About three-quarters agreed that corporal punishment could also be justified as a punishment. Teachers and superintendents were consistently more supportive of both statements than were the other respondents. During the interviews, all of the respondents did not agree that arbitrary teacher control practices can be justified, nor that corporal punishment is justifiable.

It is noteworthy that only about one-half of the respondents surveyed with the questionnaire, as compared to most of the interviewees, disagreed that "teachers and school authorities should have the right to use whatever measures are necessary to control student actions and/or decisions." Most interviewees disagreed because the "right to use whatever measures" was too broad and open to abuse.

Sub-Problem Two

Sub-problem two addresses the question:

What are the perceptions of school authorities concerning "Equality Rights" of pupils in the context of the Charter?

The Charter: Section 15. Section 15 reads as follows:

> 1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
>
> 2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Professor Beckton (1987) stated that section 15 is one of the most significant sections of the Charter in that it has a mechanism to redress governmental actions that may result in the denial of equality. Affirmative action is, therefore, possible if the intent of the action is to ameliorate or improve the condition(s) of the disadvantaged individuals or groups with programs or activities. Educators ought to be able to establish programs to help the disadvantaged individuals or groups in our society.

At the National Symposium on Equality Rights, Mr. Judge Zuker (1985) questioned whether or not mainstreaming was consistent with equal protection, whether an appropriate education included special education, and whether or not presumed sexual characteristics were relevant in requiring females to take, for example, home economics and prohibiting boys from such a course. Furthermore, according to Zuker

(1985), females suffer discrimination when they are restricted, explicitly or implicitly, in registering for certain courses. Accordingly, Zuker questioned whether or not this denial of equal education for females would result in the denial of equal employment opportunity.

In R. v. Big M Drug Mart (1985), the Supreme Court of Canada ruled that the interests of "true equality may well require differentiation in treatment." The respondents addressed the problem of equal access to an education for a student, a student's inability to conform to classroom norms, parental rights, and access to specialized programs or classes.

Perceptions. Most respondents agreed that the province should ensure that there is equality of access to an education for the abled and the disabled as well as a full range of alternative education placements. Most also agreed that the province had the responsibility to ensure equality of access. However, the right to publicly funded schooling for all students, when placed in the context of the disabled child only, received less support from the respondents with nil to five years of experience even though most respondents stated that equal access to publicly funded schooling was, in principle, correct. Most of the interviewed respondents also supported the statement dealing with the right to publicly funded schooling for all students. Again, in the context of the disabled child, some interviewees added a qualifier indicating that the implementation process could vary for disabled children.

Most respondents agreed that a child should be placed in the most suitable program. For example, the respondents agreed that to place a disadvantaged child in a regular classroom, without thorough review of the child's capability, could be harmful. Correspondingly, they marginally supported the placement of learning disabled students in regular classrooms if special classes did not exist.

Second, as to student inability to conform, a majority of respondents were _not_ convinced that there may be reasons for depriving a student of the privilege of being retained in a regular classroom. Most respondents also supported appeal procedures for students who do not conform to the norms of the classroom. Moreover, there was strong respondent support that teachers should provide students with an equal opportunity to an education. However, about two-thirds of the respondents agreed that schools should be able to refuse the admission of medically, physically or emotionally handicapped students who can _not_ conform to the norms of classroom practices. During the interviews, the ambivalence of the respondents towards denial of entrance to regular classes of students who did not wish or might not be able to conform to the norms of classroom practices was even more apparent. Moreover, it became obvious that teachers, more than the other respondents, believed that students who do not want to work in class should be deprived of the privilege of being retained in a regular classroom. A large majority of the other respondents disagreed. In dealing with the entry of handicapped students to regular classes, there was agreement that they have the right to an education. On the other hand, agreement that schools can also refuse admission was based mainly on lack of facilities or supplementary personnel being made available by the Department of Education.

The respondents also supported having selection procedures related to the purpose of special classes, and having selection procedures specifying mandatory parental involvement in the placement of disabled students.

The phrase "affirmative action" caused problems for respondents who questioned the meaning of the term. During the interview sessions, there was general agreement with its intent after it was explained. Agreement or disagreement was based mainly on the application of the principle of affirmative action. However, because the respondents to the questionnaire and in the interviews queried the term in the survey or sought an explanation of the term, the responses may not accurately reflect their perceptions. It is noteworthy that teachers and principals were the strongest supporters of the statement suggesting the affirmative action requirements be defined in the School Act.

Respondents overwhelmingly supported the statements dealing with teachers being required to teach the core curriculum, parents having the right to appeal the actions or decisions of authorities that may affect their child(ren) and the provision of alternative diplomas for students taking alternative programs. Most also supported the principle of equal access and strongly rejected the suggestion that admission requirements be based on the sex of the student. Most interviewees also agreed that any requirements based on the sex of the student cannot be justified.

Sub-Problem Three

Sub-problem three addresses the question:

> What are the perceptions of school authorities concerning "Minority Language Educational Rights" of parents and the "multicultural heritage of Canadians" in the context of the Charter?

The Charter: Sections 23 and 27. Section 23 reads as follows:

> 1) Citizens of Canada
>
> a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
>
> b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,
>
> have the right to have their children receive primary and secondary school instruction in that language in that province.
>
> 2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.
>
> 3) The right of citizens of Canada under subsection (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province
>
> (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
>
> (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of

public funds.

Section 23 guarantees the English or French linguistic minority the right to educate their children in their first language. If Mr. Jean Chrétien's (1980:3286-3287) comments in the House of Commons and Justice Richard's judgment in New Brunswick are upheld by the Supreme Court of Canada, then French immersion education in Alberta will become an alternative form of instruction for the English linguistic majority. French language instruction will be for students who qualify under section 23 of the Charter.

Specifically, the Charter, allows under section 23, parents who belong to the official minority language group certain constitutional rights. These parents, where numbers warrant, have the right "to have their children receive primary and secondary instruction in the language of the English or French linguistic minority population of the province" [Charter, section 23(3)] and, "receive that instruction in minority language educational facilities provided out of public funds."

The Supreme Court of Canada, in Quebec Association of Protestant School Boards v. A.G. Que. (1984), stated that certain parts of Bill 101 were inconsistent with the Charter. The Ontario Court of Appeal has also addressed minority educational rights in a reference to the Court of Appeal. It stated, for example, that the provisions of the Charter transcended the geographical boundaries of school boards and that fundamental fairness impelled the court to say that parents have the right to manage and control educational facilities used by them.

Mr. Justice Purvis of the Alberta Court of Queen's Bench, who adjudicated Mahé v. R. (1985), stated that the present School Act was in conflict with the Charter in that it provided permissive instead of mandatory legislation permitting a degree of control and management to the citizens whose rights are established under section 23. The Mahé (1985) case was appealed to the Alberta Court of Appeal which stated section 15 need not be invoked to protect section 23 because that section "mandates effective language instruction." The Court of Appeal concluded by adding that the constitution having been explained, it was up to Alberta, subject to judicial review, to act.

Perceptions. Most respondents agreed that school boards are obligated to offer minority language instruction when sufficient numbers warrant forming a classroom. There was general agreement that school boards should have the right to make tuition agreements with their neighboring jurisdictions. Curricular responsibility, according to the respondents, was a provincial matter and not a school board responsibility. However, when questioned about Immersion classes being an adequate form of instruction for minority language students, differences of opinion between the groups occurred. Differences of opinion among interviewees did not appear to follow the same pattern. The respondents did not see the province as giving leadership in the issue. They opposed homogeneous or ethnic based schools or districts because they opposed all forms of segregation or splintering. The respondents also argued that it was better that changes occur in an incremental manner. With reference to French immersion instruction, the English speaking respondents stated that French immersion instruction was adequate for all wishing to be taught in French whereas the French speaking respondents stated that such a program was inadequate for the students whose first language is French.

Most respondents did not agree that the financial responsibility for educating minority language students should be assumed solely by the province. Most also opposed the formation of autonomous jurisdictions to educate minority language children. The differences of opinion between the public school and separate school respondents were statistically significant. More public school respondents opposed the formation of autonomous jurisdictions than separate school respondents.

According to most respondents, parents should be asked to pay the extra costs of transportation. Also, a simple majority of respondents opposed parental rights to request the establishment of French language instruction.

About two-thirds of the respondents agreed that parent advisory councils for the francophone parents were acceptable if these were not independent of the existing school systems. Separate school respondents were more supportive of the establishment of such parent advisory councils than were the public school respondents.

Section 27 affirms the multicultural heritage of Canadians by stating that the Charter "be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canada." Chretien, in the House of Commons debate of February 17, 1981 (page 7375), stated that the multicultural heritage of our country was an essential component of Canada that must be reflected in its constitution.

Alberta Education regulations encourage the development of other language programs. To date, there has not been a court action by other linguistic groups that would clarify the wording and scope of the section. It can be argued that the generality of the section may in fact give it greater flexibility for those heritage groups who wish specific remedies to preserve and enhance their heritage language and culture than the restrictive wording of section 23. Such an argument is academic until the courts are asked to adjudicate on the section.

Most respondents agreed that heritage language courses other than the two official languages should be encouraged. However, a fairly large majority objected to a specific suggestion that "children should be obligated to take a second language." It is noteworthy that trustees were the most supportive of an obligatory second language. During interviews, it became evident that differences of opinion existed. Some authorities did not like the obligatory aspect.

Others stated that the second language could be any language, not necessarily French.

Sub-Problem Four

Sub-problem four addresses the question:

> What are the perceptions of school authorities concerning "Guarantee of Rights and Freedoms" and "Fundamental Freedoms" of pupils in the school in the context of the Charter?

The Charter: Sections 1 and 2. Section 1 and 2 read as follows, respectively:

> 1. The Canadian Charter of Rights and Freedoms guarantees the right and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
>
> 2. Everyone has the following fundamental freedoms:
>
> a) freedom of conscience and religion;
>
> b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
>
> c) freedom of peaceful assembly;
>
> d) freedom of association.

Judge Black (1985) stated that section 1 is one of the Charter's most important sections because it restricts the adjudication of actions "set in it subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

In 1986, the Supreme Court of Canada confirmed the two-step approach to be preferable. In R. v. Oakes (1986), the Supreme Court stated that section 1 guarantees the rights and freedoms that are "set out" and that the onus of proving that a limitation on any Charter right is reasonable and demonstrably justified in a free and democratic society "rests upon the party seeking to uphold the limitation." In the *Zylberberg* (1986) case, the Ontario Divisional Court stated that the limitation provision saved the Ontario regulations relative to religious exercises, and in the *Big M Drug Mart Ltd.* (1985) case, the Supreme Court of Canada stated that the limitation of rights had to be "sufficiently important to override a *Charter* right and [that] the means chosen to achieve that objective [have to be] reasonable."

Section 2 guarantees freedoms of conscience and religion, of thought, belief, opinion and expression, of peaceful assembly and of association. Again in the *Big M Drug Mart Ltd.* (1985) case, the Supreme Court ruled that in reference to fundamental freedoms, the *Charter* "safeguards religious minorities from the threat of the tyranny of the majority."

Perceptions. Most respondents supported the right of the teacher to refuse to teach students who blatantly disregard school regulations or directives. They also favoured school board policies defining student privileges and responsibilities. They were less supportive, however, of having privileges and responsibilities defined in school legislation. Interviewees, who supported the teacher's right to control student behaviour, stated that the safety of the other students was more important than the rights of the individual. In other words, the collective right of the students prevailed over the individual's privileges.

Most respondents supported the statement recognizing that the privileges and responsibilities of students increase with their age. Strong support was given to the statement dealing with students having the privilege to express themselves in a nondisruptive manner as well as the right to appeal the actions of the school authorities. However, the concept of an ombudsman for schools was not as well received, being supported by about one-half of the respondents.

It was agreed that senior high school students should have the privilege of appealing the actions and/or decisions of school authorities.

Summary

Sub-Problem One

Most respondents agreed, in principle, that "everyone has the right to life, liberty and security of the person" and can only be deprived of such "in accordance with the principles of fundamental justice." Specifically, the respondents overwhelmingly supported the statements dealing with the protection of the right of students to procedural fairness. Most respondents also favoured protecting the student from arbitrary abuse of authority by the teachers, principals and other authorities by establishing school board policies to deal with the pupil.

Most respondents agreed that search of lockers should occur only if reasonable suspicion pertained and the opening of the lockers by the police be allowed only in the presence of the principal or a designate. However, the respondents strongly opposed students being protected against any search of lockers by the school. Moreover, according to most respondents, the collective rights of students were more important than lockers being private or public property and the arguments that ensue from either proposition.

There was overwhelming opposition to the punishment of a whole classroom for the offense of one or more members and for such actions as sarcasm as a form of deterrence or method of pupil control. Punishment, per se, as a deterrence was not opposed, nor was the use of corporal punishment. There was a desire for flexibility in handling student misbehaviour and an understanding that punishment that might seem excessive in one circumstance might be acceptable in another circumstance.

Consensus. There was support for students being accorded an opportunity to explain the reasons for their transgressions, for teachers accepting the responsibility of controlling student behavior, for parents being informed when their child was being questioned by the police, for police interrogation, in school, when requested by police authorities, and for parents having the right to appeal decisions that affect their child and the right to examine their child's file. There was also consensus that schools operate in a reasonable manner "as can be demonstrably justified in a free and democratic society" (Charter, s. 1).

There appeared to be an appreciation that the search of lockers and/or seizure of articles occur only if there were reasonable suspicion that lockers were being used improperly. The right of the police to search lockers and seize articles in the presence of the principal or teacher was affirmed. However, school authorities opposed protecting student privacy rights. They believed that the school does have the right to require students to open their lockers.

Respondents wanted to protect student rights to locker privacy, whenever student behavior or action becomes a legal matter.

The use of any form of whole classroom punishment, sarcasm or other forms of intellectual punishment was condemned. The use of corporal punishment was condoned. Teachers especially wanted the right to determine appropriate behavior controls and appreciated that what appears to be arbitrary or excessive in one circumstance may be acceptable in another circumstance. In other words, teachers were most insistent on having the flexibility to deal with each student case on its own merits without having to resort to rules and regulations that may encumber their task.

Opposition. Differences of opinion occurred on the role of the teacher and principal relative to the authority of the teacher and parent, the principal's right to discipline students and the teacher's right to refuse admission of disruptive students. Trustees and teachers, in contrast to the principals, prefered regulations which may diminish inconsistencies in decisions affecting individual students.

Differences of opinion regarding to the principal and teacher having the right to use their judgment in protecting the privacy rights of the student also occurred.

There was some opposition to police officer search of lockers and seizure of articles, without school approval, in contrast to approval for the school to have such authority. Most principals and teachers wanted the necessary flexibility to discipline their students on all matters without interference.

Sub-Problem Two

Most respondents agreed with the intent of section 15 of the Charter. The application of affirmative action did not meet opposition as long as the other students would not suffer. However, most respondents opposed the establishment of special programs and the right of parents to request the establishment of such programs. As a general rule, special provisions were opposed.

Consensus. There was agreement, in principle, that all students have the right to publicly funded schooling, the right to choose programs or schools, the right to alternative diplomas and the right to equal opportunity for both girls and boys. There was also agreement that the manner of placing handicapped students ought to be thoroughly reviewed. There was much reluctance to requiring that laggard students be withdrawn from the classroom.

Opposition. Opposition to affirmative action programs was generally strong if the introduction of additional programs should mean that other students might suffer or that the taxpayer might be overly burdened. Most trustees also opposed the establishment of special programs upon demand by parents. Superintendents generally opposed the school having the right to deny the admission of medically, physically and emotionally handicapped students, who could not conform to the norms of a regular classroom, from attendance. Respondents agreed, in principle, with equality rights for students, but found the application of the principle to be difficult.

Sub-Problem Three

Most respondents agreed that school boards had an obligation to provide minority language instruction to the parents whose child qualified under section 23, but marginally opposed the right of the parent to request such services unless extra costs, such as transportation, were paid by the parents. Moreover, most respondents opposed the formation of autonomous school jurisdictions to offer French minority language instruction. English-speaking interviewees believed that French immersion instruction was an adequate alternative for all wishing to be taught in French, whereas French-speaking interviewees claimed that French Immersion was not adequate for francophone students.

Consensus. There was strong agreement in four areas only, namely that the present jurisdictions should be obligated to offer minority language instruction or arrange tuition arrangements, that the extra transportation costs be covered by the parents, that the province partially assume the responsibility for educating minority language students, and that the development of heritage languages be encouraged.

Opposition. Though there was generally strong opposition to the creation of autonomous minority language districts, a greater proportion of public school authorities than separate school authorities voiced such opposition.

Differences of opinion occurred relative to the adequacy of immersion education as opposed to French language education, the financing of minority language education, and making the studying of a second language obligatory for students.

Sub-Problem Four

The respondents expressed concern whenever the rights of the individual students are given preference over the collective rights of the student body in matters of pupil control. Most interviewees suggested that as students mature, they should assume privileges and responsibilities that are required of adults. Most respondents favoured the development of school board policies on student privileges and responsibilities.

Consensus. There was strong agreement that student privileges and responsibilities be defined in school board policies but not in the School Act and that these ought to increase relative to the age of the students. Also, there was agreement that students have the right to express themselves in a nondisruptive manner and to appeal the actions of school authorities. School officials marginally accepted having an ombudsman for schools.

CHAPTER 11

Conclusions, Implications and Suggestions for Future Research

The purpose of this chapter is to report the conclusions of this study, their implications and suggestions for future research.

Certain assumptions were made during the development of the survey instrument, namely that the situations developed for the questionnaire were relevant to a consideration of the *Charter*, that the statements that followed each of the situations reflected the intentions of the *Charter* and that the specific sections chosen for the study would have significant impact on schools.

Conclusions

Legal Rights

Sub-problem one addresses the question:

What are the perceptions of school authorities concerning the "Legal Rights" of pupils in the school in the context of the *Charter*?

The following conclusions are drawn from the study:

1. Whenever differences of opinion occurred, they were generally between the principals and teachers in opposition to the superintendens, Department of Education personnel and trustees.

2. Teachers and trustees were more supportive of rules and regulations to prevent inconsistencies in pupil control decisions or actions by the school administrators than were the others.

3. School authorities furthest from the classroom wanted the fewest rules and regulations possible in such matters as pupil behavior control.

4. Collective rights of students were more important and superseded individual rights in matters dealing with pupil control and punishment.

5. Teachers wanted greater flexibility to accept or refuse the admission of problem students to their classes. Principals, especially, opposed this position.

6. School authorities, at all levels, supported the students' rights to explain or justify their actions prior to decisions being taken that affect them.

7. There was general support for appeal procedures concerning disciplinary decisions or actions by teachers and principals.

8. There was a preference for local board policies, as opposed to regulations emanating from the Department of Education, relative to pupil behavior control, locker privacy and police questioning.

9. School authorities wanted to control student locker problems. There was strong belief that police search and seizure activities should only occur with principal or designate permission.

10. All non-physical forms of punishment, such as sarcasm on the part of the teachers, or extensive use of writing lines, were vigorously opposed, but not the use of physical discipline, such as corporal punishment.

11. Teachers and principals wanted the flexibility of using whatever forms of punishment that may be necessary for each specific circumstances.

In general, school authorities intrinsically wanted to respect the individual and collective rights of students but also wanted the necessary flexibility to control the behavior of their pupils.

Equality Rights

Sub-problem two addresses the question:

> What are the perceptions of school authorities concerning the "Equality Rights" of pupils in the school in the context of the Charter?

1. Whenever differences occurred, superintendent opinions tended to be more in contrast to those of the other four respondent groups.

2. The term "affirmative action" was generally misunderstood.

3. Superintendents, especially, opposed schools having the right to deny the admission of handicapped students.

4. Strong support was indicated for alternative forms of education and parental rights to choose their school or program as long as school boards were not obligated to establish such programs or open such schools.

5. Appeal procedures that involved the parents received support.

6. Courses, based on sex of student, except for team sports, were rejected.

The general approval of equal access to an education was subject to the advantages enjoyed by the majority of students not being diminished or prejudiced.

Minority Language Educational Rights and Heritage Language Instruction

Sub-problem three addresses the question:

What are the perceptions of school authorities concerning the "Minority Language Educational Rights" of parents and the "multicultural heritage of Canadians" in the context of the Charter?

1. There was a general appreciation for the teaching of languages, other than English as long as the studying of a second language was not obligatory.

2. Though there was, generally, strong opposition to the creation of autonomous minority language districts, a greater proportion of public school authorities than separate school authorities voiced such opposition.

3. Strong opposition to the teaching of French language students in an immersion setting, such opposition was voiced by school authorities of French linguistic background, however, the majority of other respondents considered the program to be adequate.

There was general acceptance that school boards are obligated to offer the necessary educational services to parents.

Guarantees of Rights and Freedoms and Fundamental Freedoms

Sub-problem four addresses the question:

> What are the perceptions of school authorities concerning the "Guarantee of Rights and Freedoms" and "Fundamental Freedoms" of pupils in the school in the context of the Charter?

1. There was a recognition that age and rights and responsibilities increased at each of the levels of a student's education at both elementary and secondary levels.

2. School board policies were seen as the preferred method of assuring student rights.

External monitoring of student rights was marginally accepted. Board policies were the preferred route. An ombudsman, for example, was less than enthusiastically wanted.

General Conclusion

The study addressed the following problem:

> What are the perceptions of Alberta school authorities regarding the rights and freedoms of pupils and/or parents implicit in the principles enunciated in the Charter?

School authorities reacted negatively or protectively whenever they believed that their rights to make decisions favouring the collective majority might be challenged. Intrinsic to this response was the manner in which they defended their decision-making rights against too structured a process imposed by society. They believed that they should be free to make their decisions, unencumbered by an external structure.

Whereas most professed support for the concept of equality rights, they were less than committed to parents having the right to request special programs to accommodate the needs of special students. The apparent contradictions seems to reflect a hesitancy in becoming involved in programs which might deplete resources that would otherwise be assigned to regular classrooms.

Opposition was indicated to the use of public funds to meet the extra costs incurred by school jurisdictions even though there was strong support and encouragement for the opportunity to learn French or a heritage language.

It is significant that most of the school authorities demonstrated a sense of fairness and justice. There were, however, recurring indications that most might have difficulty in applying their principles in some specific cases.

Implications

The school authorities were stronger in support of a principle than they were in its practical application. The more specific the situation under consideration, the more personalized were the responses, apparently reflecting both professional position and life experience. They seemed less committed to acting in keeping with their expressed fundamental attitude and more inclined to respond from personal bias as was evident during the interviews. School authorities ought to be aware that a tendency to obstruct implementation of programs that affected specific student groups may occur whenever adjustments in funding or staffing is considered.

Pupil control will continue to be a major concern of most school authorities. One may assume that most school authorities will accept the principles enunciated in the Charter, but may have difficulty in the application of specifics enunciated in each of the relevant sections of the Charter.

Disputes in search and seizure problems might increase if the attitudes of school authorities persist that teachers and principals be permitted to use their judgment in protecting the students' rights to privacy. Parental and student perceptions of inconsistencies in the actions and decision-making process might accelerate rather than mediate the problems.

The decision-making process may involve greater parental involvement in areas of punishment previously held to be the domain of the school. Tensions between school authorities and parents may be exacerbated by conflicting expectations. Parents may expect greater consistency in the decision-making process involving their children whereas school authorities may continue to prefer a decision-making structure that is unencumbered by rules and regulations. Full discretionary powers that are assumed by principals and teachers might be challenged.

The principle of affirmative action appears to be misunderstood. School authorities might consider encouraging, in terms of clear policies, funding and staffing regulations, the institutionalization of affirmative programs in education to prevent stakeholder groups lobbying for special funding and staffing allocation status.

The strong opinions against the formation of autonomous linguistic districts might lead to conflicting expectations by the majority and minority parental groups. The conflict may be inadvertently encouraged by school authorities or minority groups wanting to preserve their domain.

Conflict might be generated with respect to the collective rights of students against those of the individual. School authorities ought to encourage school discipline policies that recognize this area of possible conflict.

At present, legal authorities are determining the effect of the Charter on the schools and school jurisdictions. It is essential that educators seriously heed Judge Black's warning; namely that

> it would be a grave mistake, however, to use these challenges as an excuse to leave the matter to "experts" in the legal profession. The Charter is new and the legal profession does not yet have the great experience with it. We are all at or near the starting line together.. . .

If Judge Black's opinion is correct, then educators should be encouraged to become better informed on the Charter itself.

School boards should be advised to review their policies and bring them in line with the Charter. Such revisions need teacher and principal input to prevent the policy from becoming a legalistic document.

The Charter's requirements need to be discussed at the school level. Principal and teacher awareness, appreciation and understanding of the rights of students and parents needs to be addressed in order to minimize the incidences of litigation.

School authorities, such as trustees and their central office staff, ought to appreciate that their perceptions of problems in schools might not reflect the reality faced by classroom teachers and school principals. Educational considerations and the social context of the school within a community are parts of the picture and that Charter principles may need to be re-interpreted so that the school can perform its mandate in the post-Charter era.

The Alberta Teachers' Association's series on the law ought to concentrate on the principal's perceptions of student and parent rights. The principal ought to be competent in providing leadership in this area of concern.

Schools exercise discretionary powers over the activities of their students. Discretionary powers might be curtailed not because of the Charter requirements but because of a perception on Charter rights. An understanding of the principles enunciated by the Charter can profoundly alter school authority perceptions on student and parent rights. The School Act and school jurisdiction policies ought to reflect the principles enunciated in the Charter.

Future Research

Freedom of speech and press, and of peaceful assembly (section 2) requires study for its relevance and application in the school context.

School based discipline policies and practices need to be studied within the context of the Charter's section on "Legal Rights."

A study could ascertain if school board policies and school practices provide for equality of opportunity for male and female students as well as for handicapped pupils.

In this study, the Charter and associated terms were not mentioned to the respondents. Another study could survey school authority perceptions of the rights of students and parents when direct references to the Charter are made.

There is also a need to study the educational function of the teacher in the context of any Charter rights which might be assumed by students and parents.

A study on student and parent rights, divided along sex line may be appropriate at this time. We have biases, but these may not be well founded. Such a study could concentrate on certain sections of the Charter, specifically sections 1 and 2 with section 15.

Another study could ascertain whether respondent perceptions are related to age and sex.

A further study could ascertain student perceptions of their rights in the context of the Charter.

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APPENDICES

APPENDIX A

SURVEY AND INTERVIEW QUESTIONNAIRES

YOUR PERCEPTIONS CONCERNING THE STUDENT AND/OR PARENT

PART ONE

A situation is described followed by a series of belief statements to which you are asked to respond by circling the agree (1) or disagree (2) response. Your decision to agree or disagree with the belief statement should relate directly to the situation being described.

Situation: #1

A student has been punished, by the principal, for his/her blatant disregard of a major school regulation or directive.

		Agree	Disagree	computer only cc 1-4
1.	The teacher has the responsibility to control student behavior.	1	2	5___
2.	Educators should have the same authority to control students as do the parents.	1	2	6___
3.	Students should be accorded the opportunity to explain the situation in cases of a major infraction of school regulations or directives.	1	2	7___
4.	Parents should be consulted before action is determined in cases of major infractions of school regulations or directives.	1	2	8___
5.	The present method of expulsion, which allows school boards the authority to expel a student without the parent having the right to appeal, other than through the Minister of Education, adequately protects the rights of the student.	1	2	9___
6.	The right of the other students to an education should supersede the rights of the individual who is found guilty of a major school infraction.	1	2	10___
7.	Teachers should have the privilege of refusing to teach students who blatantly disregard major school regulations or directives.	1	2	11___
8.	The privileges and responsibilities of students should be defined by school board policy or policies.	1	2	12___
9.	The privileges and responsibilities of students should be defined, by statute, in the School Act of the Province of Alberta.	1	2	13___

	Agree	Disagree	
10. The school principal should have the right to give a transgressing student an appropriate punishment.	1	2	14__
11. Policies should be formulated by the school board that specify student appeal procedures for cases in dispute.	1	2	15__
12. I believe that regulations should exist to lessen the possibility of inconsistency among school administrators in reaching decisions that affect the privileges of individual students.	1	2	16__

Situation #2

The school administrator is concerned that certain students are hiding liquor or drugs in their lockers for purposes of bootlegging or selling.

	Agree	Disagree	
13. Students should have privacy rights against any form of locker inspection at the senior high school level.	1	2	17__
14. School administrators should have the authority to search lockers and/or seize articles only if reasonable suspicion exists.	1	2	18__
15. Teachers and principals should be allowed to use their judgment in protecting the student's right to privacy.	1	2	19__
16. The Department of Education should establish regulations that protect the student against unreasonable search of self and/or locker and seizure of student possessions by school personnel.	1	2	20__
17. Police officers should have the right to search and seize articles without the permission of a teacher, principal or other school authority.	1	2	21__
18. Students should be required to open their lockers at the request of a school teacher or the school principal.	1	2	22__
19. The school should have the authority to search a student's locker even if lockers were deemed to be private property by the courts.	1	2	23__
20. Students should be protected against any search by the school even if lockers were deemed to be school property by the courts.	1	2	24__

Situation #3

Two police constables come to the school to question a few students concerning alleged criminal activities. During the questioning, the police request that the students' lockers be searched. The principal complies and has the students open their lockers.

		Agree	Disagree	
21	The practice of police interrogation of students in school can be justified.	1	2	25__
22	Parents should be informed when their elementary child is questioned by the police.	1	2	26__
23.	Parents should be informed when their junior or senior high student is questioned by the police.	1	2	27__
24	The school administrator or a designate should be present for all police questionning in any school.	1	2	28__
25.	Police questioning or interrogation should be done in the home except in cases of urgency.	1	2	29__
26.	The police should have the right to search student lockers in the presence of the principal or a designate.	1	2	30__
27.	The Department of Education should establish regulations that define the manner in which a student can be questioned by other than school authorities.	1	2	31__
28.	School boards should establish regulations to guide the principal whenever the police request locker search and possible seizure of contents.	1	2	32__

Situation #4

In response to the actions of a few students, a whole class is punished for their lack of deportment.

		Agree	Disagree	
29.	Giving detentions to a whole class in order to control specific individuals is a justifiable means of punishment.	1	2	33__
30.	As a general principle, the application of any form of punishment as a deterrent or method of student control is an acceptable practice.	1	2	34__
31.	The School Act of Alberta should prohibit all forms of corporal punishment in the school.	1	2	35__

	Agree	Disagree	
32. A "Code of Student Rights and Responsibilities" should be included in the School Act.	1	2	36__
33. An explicit "Code of Teacher Rights and Responsibilities to the Student" would encourage less arbitrary forms of student control in the school.	1	2	37__
34. The teacher's actions to control student misbehavior should take into account the ability of the child(ren) to understand that a given act is willful and disruptive to the class.	1	2	38__

Situation #5

In response to a classroom situation, a teacher imposes a punishment, such as the writing of a massive number of lines and/or a large number of detention periods.

	Agree	Disagree	
35. The teacher should have the right of determining the manner of student behavior control.	1	2	39__
36. I believe that what is a "reasonable" action or decision on the part of the teacher or principal can be legislated as part of the School Act.	1	2	40__
37. Other forms of punishment such as subjecting a student to the ridicule of his/her classmates or sarcasm can be justified.	1	2	41__
38. Arbitrariness in student behavior control practices by a teacher or principal can be justified.	1	2	42__
39. Punishment that is excessive in one circumstance may be acceptable in another circumstance.	1	2	43__
40. The use of corporal punishment can be justified.	1	2	44__

Situation #6

A learning disabled child's parents want their child to be admitted into a regular classroom.

	Agree	Disagree	
41. All students, without any exception, have the right to publicly funded schooling.	1	2	45__
42. School administrators should have the right to refuse parental request for their learning disabled child's entry into regular programs.	1	2	46__

		Agree	Disagree	
43.	I believe that "Affirmative Action" programs in education discriminate against other students.	1	2	47__
44.	If there is no special education class, a learning disabled student should be placed into a regular classroom.	1	2	48__
45.	To place a disadvantaged child into a regular classroom, without thorough review of the child's capability, can be harmful.	1	2	49__
46.	There should be a full range of alternative education placements in appropriate education settings for all students.	1	2	50__
47.	The Department of Education should establish regulations that define the right of students to equal opportunity in schooling.	1	2	51__
48.	The School Act of Alberta should define "Affirmative Action" requirements.	1	2	52__
49.	There should be a section in the School Act of Alberta establishing procedures for selecting or denying student entrance into special education classes.	1	2	53__
50.	It is the province's responsibility to ensure that there is equality of access to an education for the disabled and the nondisabled.	1	2	54__

Situation #7

A child is said to be lazy, and is an attendance problem. The child is, therefore, referred to a special education classroom on the basis that he/she is unable to follow the regular curriculum. The decision is based solely on his/her inability to conform to the norms of a regular classroom.

		Agree	Disagree	
51.	Students who do not want to work in class should be deprived of the privilege of being retained in a regular classroom.	1	2	55__
52.	Boys implicitly suffer discrimination in special education selection practices.	1	2	56__
53.	Teachers should provide equal opportunity for all students in their classroom.	1	2	57__

	Agree	Disagree	
54. Selection procedures should be related to the purpose of special classes.	1	2	58__
55. Selection procedures should specify mandatory parental involvement in the placement of learning disabled student(s).	1	2	59__
56. There should be an appeal procedure for students and parents against any decisions of the school and/or the school system which deny equal opportunity to an education to students who do not conform to the norms of the classroom.	1	2	60__
57. Schools should be able to refuse the entry of medically, physically or emotionally handicapped students when they may not able to conform to the norms of classroom practices.	1	2	61__

Situation #8

A small group of parents request that their children be instructed in French. The number of students is not sufficient to form a class. The board suggests the students continue to take their schooling in the immersion classes that are operated by the school system.

	Agree	Disagree	
58. A school jurisdiction should be obligated to offer minority language instruction only when there are sufficient numbers of students to form a classroom.	1	2	62__
59. Parents wishing minority language instruction should be prepared to assist in paying for the extra costs of transportation to a central location.	1	2	63__
60. The provincial government should assume all financial responsibility for educating children in the official minority language.	1	2	64__
61. Parents, whose first language is French should have the right to request French language instruction for their children.	1	2	65__
62. School boards should have the right to make a tuition arrangement with a neighboring school jurisdiction to centralize French language services.	1	2	66__
63. In principle, there should be Parent Advisory Councils in order to allow parents, whose first language is French, the opportunity to participate in the development of their own schools within the present school district systems.	1	2	67__

		Agree	Disagree	
64.	There should be autonomous jurisdictions in the province that will educate children in the Official Minority language?	1	2	68__
65.	Curricula services, such as translating approved texts and workbooks, should be the responsibility of the local school boards.	1	2	69__
66.	Where there are French Immersion classes in a jurisdiction, these classes should be able to offer an adequate form of instruction in the official minority language.	1	2	70__

Situation #9

A group of parents petition the school board to have their children receive 50 percent of their instruction in a language other than English or French. Yet another group of parents petition the school board for special classes for the gifted.

		Agree	Disagree	
67.	School boards should be obligated to establish programs which are requested by a sufficient number of parents.	1	2	71__
68.	The development of heritage languages other than the two official languages should be encouraged.	1	2	72__
69.	Parents should have the right to choose the school or program they deem best for their child(ren).	1	2	73__
70.	All children should be obligated to take a second language.	1	2	74__

YOUR PERSONAL RESPONSES

PART TWO

The purpose of this section is to elicit your personal response to the following statements.

Please circle (1) if you agree with the statement or circle (2) if you disagree with the statement.

		Agree	Disagree	
71.	The rights and responsibilities of students should increase as the student becomes older.	1	2	75__
72.	Equal access to all education programs for all students should be society's goal regardless of the costs.	1	2	76__

		Agree	Disagree	
73.	A school ombudsman system should be introduced in Alberta in order to develop an awareness of teacher and student rights and responsibilities.	1	2	77__
74.	Teachers and school principals should allow a student the opportunity to explain his/her actions before deciding on a form of discipline or suspension.	1	2	78__
75.	Students should have the privilege of expressing their concerns in any manner that is not disruptive to the learning rights of other students.	1	2	79__
76.	Teachers and school principals should have the right to use whatever measures are necessary to control student actions and/or decisions.	1	2	(0012) 80__
77.	Senior high school students should have the privilege of appealing the actions and/or decisions of teachers, school principals and other authorities.	1	2	Card 2 1-4 5__
78.	Access to student files and documents should be controlled and restricted to designated professional staffs.	1	2	6__
79.	Parents should have the right to examine their child's school file(s).	1	2	7__
80.	Teachers should be required to teach the core or compulsory part of the curriculum as authorized by Alberta Education.	1	2	8__
81.	Parents should have the right to an appeal procedure for actions and/or decisions that affect their child.	1	2	9__
82.	Students who choose to be educated in private schools should have the majority of the costs covered by government grants.	1	2	10__
83.	Alternative diplomas should be offered to students graduating from alternative programs.	1	2	11__
84.	Admission based on sex of the student may be justified for some courses.	1	2	12__
85.	Admission based on sex of the student may be justified for entry into some student activities such as sport teams.	1	2	13__

86. Respondent (check one)

Principal ____
School trustee ____
Superintendent ____
Teacher ____
Other (name) ____ 14__

87. Type of school jurisdiction (check one). *

Public ____
Separate ____ 15__

88. Professional experience as an educator or trustee (check one).

0 - 5 years ____
6 - 10 years ____
11 - 20 years ____
21 or more years ____ 16__

THANK-YOU for completing the survey questionnaire

YOUR PERCEPTIONS CONCERNING THE STUDENT AND/OR PARENT

PART ONE

A situation is described followed by a series of belief statements to which you are asked to respond by circling the agree (1) or disagree (2) response. Your decision to agree or disagree with the belief statement should relate directly to the situation being described.

Situation: #1

A student has been punished, by the principal, for his/her blatant disregard of a major school regulation or directive.

		Agree	Disagree
2.	Educators should have the same authority to control students as do the parents.	1	2
4.	Parents should be consulted before action is determined in cases of major infractions of school regulations or directives.	1	2
5.	The present method of expulsion, which allows school boards the authority to expel a student without the parent having the right to appeal, other than through the Minister of Education, adequately protects the rights of the student.	1	2
6.	The right of the other students to an education should supersede the rights of the individual who is found guilty of a major school infraction.	1	2
7.	Teachers should have the privilege of refusing to teach students who blatantly disregard major school regulations or directives.	1	2
10.	The school principal should have the right to give a transgressing student an appropriate punishment.	1	2
12.	I believe that regulations should exist to lessen the possibility of inconsistency among school administrators in reaching decisions that affect the privileges of individual students.	1	2

Situation #2

The school administrator is concerned that certain students are hiding liquor or drugs in their lockers for purposes of bootlegging or selling.

	Agree	Disagree
15. Teachers and principals should be allowed to use their judgment in protecting the student's right to privacy.	1	2
17. Police officers should have the right to search and seize articles without the permission of a teacher, principal or other school authority.	1	2
19. The school should have the authority to search a student's locker even if lockers were deemed to be private property by the courts.	1	2

Situation #3

Two police constables come to the school to question a few students concerning alleged criminal activities. During the questioning, the police request that the students' lockers be searched. The principal complies and has the students open their lockers.

	Agree	Disagree
24 The school administrator or a designate should be present for all police questioning in any school.	1	2
25. Police questioning or interrogation should be done in the home except in cases of urgency.	1	2

Situation #4

In response to the actions of a few students, a whole class is punished for their lack of deportment.

	Agree	Disagree
31. The School Act of Alberta should prohibit all forms of corporal punishment in the school.	1	2
32. A "Code of Student Rights and Responsibilities" should be included in the School Act.	1	2

Situation #5

In response to a classroom situation, a teacher imposes a punishment, such as the writing of a massive number of lines and/or a large number of detention periods.

		Agree	Disagree
35.	The teacher should have the right of determining the manner of student behavior control.	1	2
36.	I believe that what is a "reasonable" action or decision on the part of the teacher or principal can be legislated as part of the School Act.	1	2
37.	Other forms of punishment such as subjecting a student to the ridicule of his/her classmates or sarcaism can be justified.	1	2
38.	Arbitrariness in student behavior control practices by a teacher or principal can be justified.	1	2
39.	Punishment that is excessive in one circumstance may be acceptable in another circumstance.	1	2
40.	The use of corporal punishment can be justified.	1	2

Situation #6

A learning disabled child's parents want their child to be admitted into a regular classroom.

		Agree	Disagree
41.	All students, without any exception, have the right to publicly funded schooling.	1	2
48.	The School Act of Alberta should define "Affirmative Action" requirements.	1	2
49.	There should be a section in the School Act of Alberta establishing procedures for selecting or denying student entrance into special education classes.	1	2

Situation #7

A child is said to be lazy, and is an attendance problem. The child is, therefore, referred to a special education classroom on the basis that he/she is unable to follow the regular curriculum. The decision is based solely on his/her inability to conform to the norms of a regular classroom.

		Agree	Disagree
51.	Students who do not want to work in class should be deprived of the privilege of being retained in a regular classroom.	1	2
57.	Schools should be able to refuse the entry of medically, physically or emotionally handicapped students when they may not able to conform to the norms of classroom practices.	1	2

Situation #8

A small group of parents request that their children be instructed in French. The number of students is not sufficient to form a class. The board suggests the students continue to take their schooling in the immersion classes that are operated by the school system.

		Agree	Disagree
60.	The provincial government should assume all financial responsibility for educating children in the official minority language.	1	2
63.	In principle, there should be Parent Advisory Councils in order to allow parents, whose first language is French, the opportunity to participate in the development of their own schools within the present school district systems.	1	2
64.	There should be autonomous jurisdictions in the province that will educate children in the Official Minority language?	1	2
66.	Where there are French Immersion classes in a jurisdiction, these classes should be able to offer an adequate form of instruction in the official minority language.	1	2

Situation #9

A group of parents petition the school board to have their children receive 50 percent of their instruction in a language other than English or French. Yet another group of parents petition the school board for special classes for the gifted.

	Agree	Disagree
69. Parents should have the right to choose the school or program they deem best for their child(ren).	1	2
70. All children should be obligated to take a second language.	1	2

YOUR PERSONAL RESPONSES

PART TWO

The purpose of this section is to elicit your personal response to the following statements.

Please circle (1) if you agree with the statement or circle (2) if you disagree with the statement.

	Agree	Disagree
73. A school ombudsman system should be introduced in Alberta in order to develop an awareness of teacher and student rights and responsibilities.	1	2
76. Teachers and school principals should have the right to use whatever measures are necessary to control student actions and/or decisions.	1	2
82. Students who choose to be educated in private schools should have the majority of the costs covered by government grants.	1	2
84. Admission based on sex of the student may be justified for some courses.	1	2

86. Respondent (check one)

Principal ____
School trustee ____
Superintendent ____
Teacher ____
Other (name) ____

87. Type of school jurisdiction (check one).

Public ____
Separate ____

88. Professional experience as an educator or trustee (check one).

0 - 5 years ____
6 - 10 years ____
11 - 20 years ____
21 or more years ____

APPENDIX B

THE SURVEY INSTRUMENT WITH APPROPRIATE SECTIONS OF THE CHARTER

YOUR PERCEPTIONS CONCERNING THE STUDENT AND/OR PARENT

PART ONE

A situation is described followed by a series of belief statements to which you are asked to respond by circling the agree (1) or disagree (2) response. Your decision to agree or disagree with the belief statement should relate directly to the situation being described.

Situation: #1

A student has been punished, by the principal, for his/her blatant disregard of a major school regulation or directive.

		Agree	Disagree	
1.	The teacher has the responsibility to control student behavior.	1	2	Section 7 -- Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
2.	Educators should have the same authority to control students as do the parents.	1	2	Section 7
3.	Students should be accorded the opportunity to explain the situation in cases of a major infraction of school regulations or directives.	1	2	Section 7
4.	Parents should be consulted before action is determined in cases of major infractions of school regulations or directives.	1	2	Section 7
5.	The present method of expulsion, which allows the school boards the authority to expel a student without the parent having the right to appeal, other than through the Minister of Education, adequately protects the rights of the student.	1	2	Section 7

		Agree	Disagree	
6.	The right of the other students to an education should supersede the rights of the individual who is found guilty of a major school infraction.	1	2	Section 7 -- Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
7.	Teachers should have the privilege of refusing to teach students who blatantly disregard major school regulations or directives.	1	2	Section 1 -- The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. Section 7
8.	The privileges and responsibilities of students should be defined by school board policy or policies.	1	2	Section 1
9.	The privileges and responsibilities of students should be defined, by statute, in the School Act of the Province of Alberta.	1	2	Section 1
10.	The school principal should have the right to give a transgressing student an appropriate punishment.	1	2	Section 7
11.	Policies should be formulated by the school board that specify student appeal procedures for cases in dispute.	1	2	Section 7
12.	I believe that regulations should exist to lessen the possibility of inconsistency, among school administrators in reaching decisions that affect the privileges of individual students.	1	2	Section 7

Situation #2

The school administrator is concerned that certain students are hiding liquor or drugs in their lockers for purposes of bootlegging or selling.

		Agree	Disagree	
13.	Students should have privacy rights against any form of locker inspection at the senior high school level.	1	2	Section 8 -- Everyone has the right to be secure against unreasonable search and seizure.
14.	School administrators should have the authority to search lockers and/or seize articles only if reasonable suspicion exists.	1	2	Section 8
15.	Teachers and principals should be allowed to use their judgment in protecting the student's right to privacy.	1	2	Section 7 -- Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
16.	The Department of Education should establish regulations that protect the student against unreasonable search of self and/or locker and seizure of student possessions by school personnel.	1	2	Section 8
17.	Police officers should have the right to search and seize articles without the permission of a teacher, principal or other school authority.	1	2	Section 8
18.	Students should be required to open their lockers at the request of a school teacher or the school principal.	1	2	Section 8
19.	The school should have the authority to search a student's locker even if lockers were deemed to be private property by the courts.	1	2	Section 8
20.	Students should be protected against any search by the school even if lockers were deemed to be school property by the courts.	1	2	Section 8

Situation #3

Two police constables come to the school to question a few students concerning some possible criminal activities. During the questioning, the police request the students' lockers be searched. The principal complies and has the students open their lockers.

		Agree	Disagree	
21	The practice of police interrogation of students in school can be justified.	1	2	Section 7 -- Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
22	Parents should be informed when their elementary child is questioned by the police.	1	2	Section 7 - Please note that Section 11 may also be relevant.
23.	Parents should be informed when their junior or senior high student is questioned by the police.	1	2	Section 7
24.	The school administrator or a designate should be present for all police questioning in any school.	1	2	Section 7
25.	Police questioning or interrogation should be done in the home except in cases of urgency.	1	2	Section 7
26.	The police should have the right to search student lockers in the presence of the principal or a designate.	1	2	Section 8 -- Everyone has the right to be secure against unreasonable search and seizure.
27.	The Department of Education should establish regulations that define the manner in which a student can be questioned by other than school authorities.	1	2	Section 7
28.	School Boards should establish regulations to guide the principal whenever the police request locker search and possible seizure of contents.	1	2	Section 8

Situation #4

In response to the actions of a group of students, a whole class is punished for their lack of deportment.

	Agree	Disagree	
29. Giving detentions to a whole class in order to control specific individuals is a justifiable means of punishment.	1	2	Section 12 -- Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.
30. As a general principle, the application of any form of punishment as a deterrent or method of student control is an acceptable practice.	1	2	Section 12
31. The School Act of Alberta should prohibit all forms of corporal punishment in the school.	1	2	Section 12
32. A "Code of Student Rights and Responsibilities" should be included in the School Act.	1	2	Section 12
33. An explicit "Code of Teacher Rights and Responsibilities to the Student" would encourage less arbitrary forms of student control in the school.	1	2	Section 7
34. The teachers actions to control student behavior should take into account the ability of the child(ren) to understand that a given act is willful and detructive to the class.	1	2	Section 7

Situation #5

In response to a classroom situation, a teacher imposes an excessive punishment, such as a massive number of lines and/or a large number of detention periods.

		Agree	Disagree	
35.	The teacher should have the right of determining the manner of student behavior control.	1	2	Section 12 -- Everyone has the right to be secure against unreasonable search or seizure.
36.	I believe that what is "reasonable" action or decision on the part of the teacher or principal can be legislated as part of the School Act.	1	2	Section 7 -- Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
37.	Other forms of punishment such as subjecting a student to the ridicule from his/her classmates or sarcasm can be justified.	1	2	Section 12
38.	Arbitrariness in student behavior control practices by a teacher or principal can be justified.	1	2	Section 12
39.	Punishment that is excessive in one circumstance may be acceptable in another circumstance.	1	2	Section 12
40.	The use of corporal punishment can be justified.	1	2	Section 12

Situation #6

A learning disabled child's parents want their child to be admitted into a regular classroom.

	Agree	Disagree	
41. All students, without any exception, have the right to publicly funded schooling.	1	2	Section 15 -- Everyone is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and in particular, without discrimination based on race, nationality or ethnic origin, colour, religion, sex, age, or mental or physical disability.
42. School administrators should not have the right to refuse parental request for their learning disabled child's entry into regular programs.	1	2	Section 15
43. I believe that "Affirmative Action" programs in education discriminate against other students.	1	2	Section 15
44. If there is no special education class, a learning disabled student should be placed into a regular classroom.	1	2	Section 15
45. To place a disadvantaged child into a regular classroom, without thorough review of the child's capability, can be harmful.	1	2	Section 15

		Agree	Disagree	
46.	There should be a full range of alternative education placements in appropriate education settings for all students.	1	2	Section 15 -- Everyone is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and in particular, without discrimination based on race, nationality or ethnic origin, colour, religion, sex, age, or mental or physical disability.
47.	The Department of Education should establish regulations that define the right of students to equal opportunity in schooling.	1	2	Section 15
48.	The School Act of Alberta should define "Affirmative Action" requirements.	1	2	Section 15
49.	There should be a section in the School Act of Alberta establishing procedures for selecting or denying student entrance into special education classes.	1	2	Section 15
50.	It is the province's responsibility to ensure that there is equality of access to an education for the disabled and the nondisabled.	1	2	Section 15

Situation #7

A child is said to be lazy, and is an attendance problem. The child is, therefore, referred for a special education classroom on the basis that he/she is unable to follow the regular curriculum. The decision is based solely on his/her inability to conform to the norms of a regular classroom.

	Agree	Disagree	
51. Students who do not want to work in class should be deprived of the privilege of being retained in a regular classroom.	1	2	Section 15 -- Everyone is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and in particular, without discrimination based on race, nationality or ethnic origin, colour, religion, sex, age, or mental or physical disability.
52. Boys implicitly suffer discrimination in special education selection practices.	1	2	Section 15
53. Teachers should provide equal opportunity for all students in their classroom.	1	2	Section 15
54. Selection procedures should be related to the purpose of special classes.	1	2	Section 15
55. Selection procedures should specify mandatory parental involvement in the placement of learning disabled student(s).	1	2	Section 15
56. There should be an appeal procedure for students and parents against any decisions of the school and/or the school system which deny equal opportunity to an education to students who do not conform to the norms of the classroom.	1	2	Section 15
57. Students should be able to refuse the entry of medically, physically or emotionally handicapped students when they may not be able to conform to the norms of classroom practices.	1	2	Section 15

Situation #8 _

A small group of parents request that their children be instructed, in French. The number of students is not sufficient to form a class. The board suggests the students continue to take their schooling in the immersion classes that are operated by the school system.

	Agree	Disagree	
58. A school jurisdiction should be obligated to offer minority language instruction only when there are sufficient numbers of students to form a classroom.	1	2	Section 23 -- (summary only) A minority program in Alberta is an educational program offered in French and designed for children of the following citizens of Canada: a. whose first language learned and still understood is French; b. who have received their primary school instruction in Canada in French; or c. of whom any child has received or is receiving instruction in French.
59. Parents wishing minority language instruction should be prepared to assist in paying the extra costs of transportation to a central location.	1	2	Section 23
60. The provincial government should assume all financial responsibility for educating children in the official minority language.	1	2	Section 23
61. Parents, whose first language is French, should have the right to request French language instruction for their children.	1	2	Section 23
62. School boards should have the right to make a tuition arrangement with a neighboring school jurisdiction to centralize the French language services.	1	2	Section 23

	Agree	Disagree	
63. In principle, there should be Parent Advisory Councils in order to allow parents, whose first language is French, the opportunity to participate in the development of their own 'schools within the present school district systems.	1	2	Section 23 — (summary only) A minority program in Alberta is an educational program offered in French and designed for children of the following citizens of Canada: a. whose first language learned and still understood is French; b. who have received their primary school instruction in Canada in French; or c. of whom any child has received or is receiving instruction in French.
64. There should be autonomous jurisdictions in the province that will educate children in the Official Minority language?	1	2	Section 23
65. Curricula services, such as translating approved texts and workbooks should be the responsibility of the local school board.	1	2	Section 23
66. Where there are French Immersion classes in a jurisdiction, these classes should be able to offer an adequate form of instruction in the official minority language.	1	2	Section 23

Situation #9

A group of parents petition the school board to have their children receive 50 percent of the instruction in a language other than English or French. Yet another group of parents petitioned the school board for special classes for the gifted.

	Agree	Disagree	
67. School boards should be obligated to establish programs which are requested by a sufficient number of parents.	1	2	Section 15 -- Everyone is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and in particular, without discrimination based on race, nationality, or ethnic origin, colour, religion, sex, age or mental or physical disability.
68. The development of heritage languages other than the two official languages should be encouraged.	1	2	Section 27 -- This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.
69. Parents should have the right to choose the school or program they deem best for their child(ren).	1	2	Section 23 -- (summary only) A minority program in Alberta is an educational program offered in French and designed for children of the following citizens of Canada: a. whose first language learned and still understood is French; b. who have received their primary school instruction in Canada in French; or c. of whom any child has received or is receiving instruction in French. Sections 15 and 27.
70. All children should be obligated to take a second language.	1	2	Section 27

YOUR PERSONAL RESPONSES

PART TWO

The purpose of this section is to elicit your personal response to the following statements.

Please circle (1) if you agree with the statement or circle (2) if you disagree with the statement.

	Agree	Disagree	
71. The rights and responsibilities of students should increase as the student becomes older.	1	2	Section 1 -- The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
72. Equal access to all education programs for all students should be society's goal regardless of the costs.	1	2	Section 15 -- Everyone is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and in particular, without discrimination based on race, nationality, or ethnic origin, colour, religion, sex, age or mental or physical disability.
73. A school ombudsman system should be introduced in Alberta in order to develop an awareness of teacher and student rights and responsibilities.	1	2	Section 2 -- Everyone has the following fundamental freedoms: a) freedom of conscience and religion; b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; c) freedom of peaceful assembly; and d) freedom of association.

		Agree	Disagree	
74.	Teachers and school principals should allow a student the opportunity to explain his/her actions before deciding on a form of discipline or suspension.	1	2	Section 7 -- Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
75.	Students should have the privilege of expressing their concerns in any manner that is not disruptive to the learning rights of other students.	1	2	Section 2 -- Everyone has the following fundamental freedoms: a) freedom of conscience and religion; b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; c) freedom of peaceful assembly; and d) freedom of association.
76.	Teachers and school principals should have the right to use whatever measures are necessary to control student actions and/or decisions.	1	2	Section 12 -- Everyone has the right not to be subjected to any cruel and unusual treatments or punishment.
77.	Senior high school students should have the privilege of appealing the actions and/or decisions of teachers, school principals and other authorities.	1	2	Section 2
78.	Access to student files and documents should be controlled and restricted to designated professional staffs.	1	2	Section 7
79.	Parents should have the right to examine their child's school file(s).	1	2	Section 7
80.	Teachers should be required to teach the core or compulsory part of the curriculum as authorized by Alberta Education.	1	2	Section 15 -- Everyone is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and in particular, without discrimination based on race, nationality, or ethnic origin, colour, religion, sex, age or mental or physical disability.

		Agree	Disagree	
81.	Parents should have the right to an appeal procedure for actions and/or decisions that affect their child.	1	2	Section 7 -- Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Section 15
82.	Students who choose to be educated in private schools should have the majority of the costs covered by government grants.	1	2	Section 15
83.	Alternative diplomas should be offered to students graduating from alternative programs.	1	2	Sections 15 Section 23 -- (summary only) A minority program in Alberta is an educational program offered in French and designed for children of the following citizens of Canada: a. whose first language learned and still understood is French; b. who have received their primary school instruction in Canada in French; or c. of whom any child has received or is receiving instruction in French. Section 27 -- This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.
84.	Admission based on sex of the student may be justified for some courses.	1	2	Section 15
85.	Admission based on sex of the student may be justified for entry into some student activities such as sport teams.	1	2	Section 15

86. (Refer to the Questionnaire for questions 86 to 88)

APPENDIX C

LETTERS OF CORRESPONDENCE

FACULTY OF EDUCATION
DEPARTMENT OF EDUCATIONAL ADMINISTRATION

THE UNIVERSITY OF ALBERTA
EDMONTON, CANADA
T6G 2G5

June 5, 1987

Mr. Noel Gour
Executive Assistant
Member Srvices
Alberta Teachers' Association

Dear Noel:

Congratulations on your important appointment!

Obviously you have already demonstrated your competence and service potential to the Association.

Best wishes,

John

John J. Bergen

P.S. Except for the period approximating June 29 to July 10, I expect to be on hand all summer, and will be pleased to provide whatever assistance I can in the completion of your dissertation.